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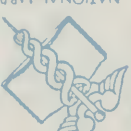
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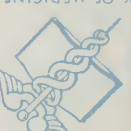
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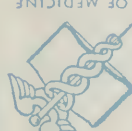
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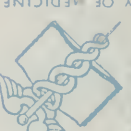
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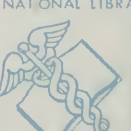
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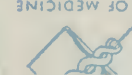
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MEDICO-LEGAL STUDIES,

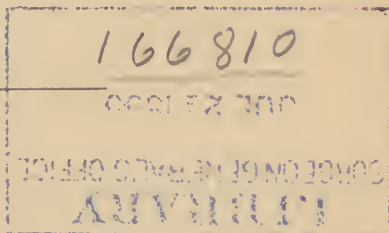
VOLUME V.

BY

CLARK BELL, ESQ.,

Of the New York Bar,

Editor Medico-Legal Journal.



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DEDICATION.

To

WARREN B. OUTTEN, M. D.,
CHIEF SURGEON MISSOURI PACIFIC RAILWAY,
OF ST. LOUIS, MO.

Allow me to dedicate this volume to you as my tribute
to the honorable and influential part you have taken
in bringing Railway Surgery into that recog-
nition in the domain of Forensic Medicine
which it now holds in the estimation of
the thoughtful students of Law,
Medicine and Surgery.

CLARK BELL.

NEW YORK, April, 1898.



HON. CALVIN E. PRATT,
Late Justice Supreme Court, Vice-President Medico-Legal Society.

From advance sheets Supreme Court of the States and Provinces of North America.

PREFACE.

The present volume is a continuation of such contributions as I have made upon medico-legal subjects, during the years 1895, 1896 and 1897, in part, upon the same plan as had been followed by me in the earlier volumes of this series.

Nearly all of these essays have already appeared in the Medico-Legal Journal, and in various publications.

The illustrations are such as have appeared in that Journal, and in the forthcoming volume of the History of the Supreme Court of the States and Provinces of North America.

The work carries out my original plan of preserving, in volumes, such of my published articles as relate to Forensic Medicine.

NEW YORK, November, 1897.

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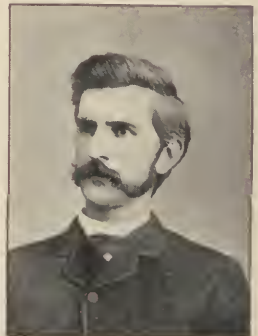
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HYPNOTISM IN THE CRIMINAL COURTS.¹

BY CLARK BELL, ESQUIRE.

President of the Medico Legal Congress.

On January 14th, 1891, the standing committee on Hypnotism, of the Medico Legal Society, made a report to that body, claiming that certain facts were established, from which I make a few short abstracts :

"Hypnosis, or artificial trance sleep, is a subjective phenomenon.

"Hypnosis is recognized in three stages, lethargy, somnambulism and catalepsy.

"Hypnotism has been serviceable in Medical and Surgical practice, both as a therapeutic agent and in some cases as an efficient and safe anæsthetic.

"The illusory impression created by hypnosis may be made to terminate and tyrannize the subsequent actions of the subject."

And among the legal questions raised by this report were :

Is hypnosis a justifiable inquisitorial agent?

Do we need a reconstruction of the laws of evidence in view of the perversion, visual or otherwise, created by the trance?

Is any revision of the penal code desirable in view of these facts?²

The replies of Prof. George Trumbull Ladd, of Yale ; Prof. Paul Carus, of Chicago ; Prof. William James, of Harvard ; Prof. Joseph Jastrow, of Wisconsin, and Prof. C. H. Hughes, of St. Louis, to the questions raised by the above report, were extensive, interesting, and

¹ Read before the Medico-Legal Congress. September, 1865.

² Vide Medico-Legal Journal, Vol. VIII, No. 3, p. 263.

formed the basis of a former paper by the writer on "Hypnotism and the Law."¹

The report of the three leading experts, in the Bompard case, Brouardel, Motet and Gilbert Ballet had also been made. In reviewing this report and the difference that then divided the schools of Nancy and of Paris, the writer said :—

"Prof. Liegeois and his confreres regard "Hypnotism" as a psychological condition ; Prof. Brouardel and his associates, as a pathological state."

"This trial does not therefore clear the air of the difficulties of the Medico Legal inquiry, whether crime can be committed by the suggestion of the hypnotizer of which the subject is the innocent and also unconscious actor? Brouardel believed Bompard responsible." What most interests us now is the inquiry, can crime be thus committed by suggestion?

In March, 1895, on the invitation of the officers of the Section on Medical Jurisprudence of the American Medical Association, the writer of this article prepared a paper upon this topic for presentation to that body at its May, 1895 session, and submitted the views of some of our leading scientists in answer to the following questions regarding hypnotic suggestion :—

"1. Can crime be committed by the hypnotizer, the subject being the unconscious and innocent agent and instrument?

2. If the subject is unconscious and even unwilling, has the hypnotizer such power and domination over the hypnotized as could control action to the extent of the commission of a crime?

3. Is it certain or possible, to remove by hypnotic suggestion from the mind of the subject, all the memory of acts or occurrences which happens in the hypnotic state?

4. Would it be possible for a hypnotizer—to so control a hypnotized subject, as to, for example make him (1) sign a will in the presence of third persons, declare it to be his will, and to request them to sign as attesting witnesses, and be afterward wholly unconscious of the occurrence; (2) or a note of hand, or a check?

The replies to these questions elicited affirmative replies from Prof. G. Stanley Hall, of Clark University, Worcester, Mass.; Prof. J. Mark Baldwin, of Princeton.; George Frederick Laidlaw, M. D., of New York City; R. J. Nunn, M. D., of Savannah, Ga.; and a substantially negative response from D. R. Brower, M. D., of Chicago, the chairman of that Section of the American Medical Association.

Prof. G. Stanley Hall replied: "I would say that my own experience with hypnotism, which was quite extended while I was at the

¹ Vide, Medico Legal Journal, Vol. VIII., p. 353, et seq. and Vol. 13, No. 1, p. 47.

Johns Hopkins, leaves no shadow of doubt but that a hypnotic subject can be made an unconscious and innocent agent of crime. Signing away of money has been done in France, and rapes have been committed. The penal code has been modified in important respects to meet such cases. All memory is sometimes removed from the subject mind, but not always."

Prof. J. Mark Baldwin, of Princeton University, and one of the editors of the *Psychological Review*, says, in response to the questions: To the first question: "Yes, I think so; the particular crime depending upon the mental and moral habits of the subject; each subject's suggestibility for crime seems to have its limits, at which he resists and refuses the suggestion."

To the second question he replies,—

"Not generally, although the subject may hesitate and make an apparent effort to resist, and then finally follow out the suggestion."

To the third question, he says,—

"Yes, indeed, such forgetfulness, after the subject returns to his normal state, is the regular phenomenon, not requiring any special suggestion." He adds, "the word 'certain,' in the question, is slightly ambiguous."

To the fourth question, as to both its first and second sub-divisions, he replies,—

"Yes, to each."

George Frederick Laidlaw, M. D., N. Y., replied:

"1. Crime can be committed by the hypnotizer the subject being the unconscious and innocent agent and instrument.

2. The operator usually can control the subject in conscious state only by a previous hypnotic sleep, in which suggestions were given to be carried out when subject became conscious.

3. The subject rarely or never remembers what has passed during the hypnotic trance. He will certainly forget the occurrences if ordered to do so.

4. If the operator had the subject in a hypnotic state he could compel the signing of papers, which act would be unknown to the subject. It is usually necessary to give verbal directions, and this would arouse the suspicions of the witnesses. The thing might be done by impressing the man that he was about to die and must draw up his will, sign, and ask witnesses to sign, and then let him go ahead."

Dr. R. J. Nunn, of Savannah, Ga., one of the Vice-Chairmen of the Psychological Section of the Medical Legal Society, and who some years since made extended experiments in this field of inquiry, replies as follows:

"My experience, limited, to be sure, would lead me to answer all the questions in the affirmative."

Dr. D. R. Brower of Chicago, chairman of the committee of the Section of Medical Jurisprudence of the American Medical Association, replied as follows :

"As to the first question, I do not believe that a person without criminal proclivities well marked could be, because :—1. A person cannot be hypnotized against his will ; and 2. A person so hypnotized is not absolutely, and in all things, under the domination of the will of the hypnotist.

"These two statements accepted, I think, throws hypnotism out of criminal jurisprudence."

Thomson Jay Hudson, while conceding that persons in a hypnotic state are constantly amenable to control by suggestion, denies that hypnotism has any place in criminal jurisprudence as a defence for crime.

James R. Cocke, M. D., in his recent work says that he does not believe that the average individual in the hypnotic state could be made to commit crimes—although the precise questions submitted were not replied to by either of these gentlemen.

The writer does not feel willing to submit any detailed statement of the various cases and authorities that have been submitted to him and investigated, because the limit of this article precludes any exhaustive treatise or citations. The purpose will be best served in stating what seems to be the consensus of thought and views from the legal side only, and as to what would be regarded by the bar, and held by the judges, in the courts of law.

1. Whatever may be the facts of the case, it is beyond all doubt, that the phenomena of the hypnotic trance and of so-called hypnotic suggestion, is not recognized as an existing fact, by the great majority of lawyers at all, and probably not by the majority of the Judges.

2. So far as the writer has had opportunity of judging, from physicians, with whom he has conversed, the large majority of medical men, especially in this city, and, indeed in this country, do not recognize it as a fact, and do not resort to it in their practice, and with very few exceptions, do not accept the existence of hypnotic suggestion as taught by either school of Paris or of Nancy, and very few have ever hypnotized others or been hypnotized themselves, and, as a rule, do not believe that they could be hypnotized.

Were the bar of the State of New York interrogated upon the first question of the letter above quoted, and the medical profession at the same time, it is the writer's opinion that at least 80 per cent., of the bar and 70 per cent., of the medical men would answer the question in

the negative, and in all instances in both professions with perfect ignorance of the subject, so far as practical knowledge or experience of the same is concerned.

To the other questions similar answers would probably be given by a like percentage of each profession.

3. In this country, in medical circles, there is, in addition, a very pronounced feeling of antagonism against accepting the existence of hypnotic suggestion as a fact, or to its practice as a therapeutic remedy, and this is stronger in the City of New York than elsewhere; and medical men who have investigated the phenomenon and know of its existence, hesitate to avow or announce it, for fear of injury to their professional standing among their associates, it is practically under the ban. But a large body of the most cultivated and advanced physicians hold different views.¹

4. On the contrary, on the Continent of Europe hypnotic suggestion is everywhere recognized as a well-established scientific fact, and men of the highest character and professional attainments devote their best efforts to its study and elucidation, and while many practice it for fraudulent purposes and dishonest ends, and exposures of imposters are as common there as here or elsewhere, there would be no respectable portion of the medical profession who would doubt its existence as a fact, or be wholly ignorant of its phenomena.

All who have witnessed the usual so-called experiments in mesmerizing, hypnotizing, etc., have been left in little doubt that the most of it was fraudulent, and this more than any other one cause has brought the whole subject into public distrust, not to say odium.²

There are however, a few careful observers here who have studied the subject in the medical profession, and who make use of it in their practice, and whose testimony should have great weight.

One witness who saw a fact and spoke positively of his own knowledge concerning it is of more weight and entitled to fuller credence than one hundred who did not see it, and who knew nothing of it, all being of equal candor and veracity.

The familiar example of the one man who did hear the clock strike in the room with ten others who did not hear it aptly illustrates the rule.

The question before the courts will always be one of fact for the jury :

(a) Was the accused, in the condition known as the hypnotic trance or state?

¹ Vide a paper by Henry Hulst, M. D., one of the Vice-Chairmen Psychological Section on "Mental Suggestion," N. Y., Med. Record Mar. 4, 1894, reviewed in *Medical Legal Journal*, Vol. X, No. 4, pp. 414-15.

² Vide Ernest Harts *Exposures of Frauds*, in *Hypnotism Medico Legal Journal* Vol. X, No. 4, p. 418.

(b) Was his mind under the control or domination of the hypnotizer?

(c) Did the accused, at the time of the act, know of the nature, character, and effect of his act, or was his act caused by the domination and will of the hypnotizer, either in conscious or unconscious states?

From what has gone before, the necessity of a full and careful examination of this subject is apparent.

The bench cannot be expected to conduct any experimental work in determining the limits of hypnotic suggestion.

No such duty rests upon the bar as a whole, although individual labor of lawyers like Mr. Hudson of Washington, D. C., is of great value.

The duty falls naturally upon the medical profession, or those few men among it who are giving their best thought to its elucidation.

Dr. Henry Hulst, of Grand Rapids, Mich., one of the Vice-Chairmen of the Psychological Section of the Medico Legal Society has established a clinic in that city where for a long time hypnotic suggestion has been used with signal success and usefulness, as a therapeutic remedy in various forms of disease.

What has been done successfully in Grand Rapids should be attempted surely in our large cities, like New York, Chicago, Philadelphia, St. Louis and Boston.

Who will lead among medical men in clinical work on the basis of the labors instituted by Dr. Hulst? This is the true road to successful results, to which it is the plain duty of medical men to address their studies.

It is as unwise for the scientific man to dismiss the whole subject without a trial, as it would be to accept it without judicious and careful trial and experiment.

This is one of the labors of the Psychological Section of the Medico Legal Society, to which the attention of students is especially called, one to which courts of law are now looking, and a field in which the medical profession should work assiduously for the enlightenment of bench, bar, and the general public.¹

In a discussion on this subject in the Medico Legal Congress Dr. Wm. Lee Howard of Baltimore, in speaking of the experiments he had made in Baltimore said:

"That it was time laws should be passed regulating and controlling hypnotic experiments and practice.

"In his experiments he has drawn the line at arson and murder." He had gone one step further and repeatedly attempted to induce subjects to make felonious attacks on persons under the most aggra-

¹ Advance sheets Medico Legal Journal and Bulletin Medico Legal Congress.

vating circumstances without securing the least indication of obedience, saying further :

“ For instance, while my subjects would stab right and left with paper daggers, yet when a real dagger was placed within their hands they have invariably refused to use it, even when suffering the greatest provocation. I account for this on the ground that a person in the active hypnotic state possesses a dual existence, and is perfectly conscious of what he is doing. In most cases he will carry out the expressed wish of the operator, provided it does not affront his sense of propriety or seriously cross his ideas of right and wrong.

“ For several years, I have made use of hypnotism in surgical practice, and my experience in this direction leads me to the conclusion that hypnosis is a mental state rather than a physical condition, such, for instance, as ether and chloroform narcosis. Time and again have I had patients, who responded to all the tests of hypnotic anæsthesia before the operation, when called upon to face the actual ordeal come out of the hypnotic state, the fear of the operation being a stronger suggestion, than that of the operator, consequently the subject awakened, obedient to the law of self-preservation, which is never set aside, even in the profoundest hypnotic state.

“ In conclusion, let me reiterate my basal proposition: Given a criminal or immoral subject and a hypnotist of like character, and criminal or immoral results may be obtained.”

“ But shall a natural force of greater potency be condemned simply because it may be occasionally misused? ”

“ I have made the ex-Governor of Maryland give me his note of hand. I have also hypnotized the cashier of a bank, and caused him to go to the vault and take out \$5,000, and if I wanted to be disreputable I could get a yacht for to-morrow's race. You will thus see how dangerous a force hypnotism is, and the necessity of its being regulated by law and its use confined to physicians. Hypnotism is a fact, and a man who disputes facts is a subject for instruction.”

Dr. Forbes Winslow said in that discussion that “ the popular belief that it was only persons of weak intellect who could be hypnotized was a fallacy. Persons of strong will were equally liable to become the subject of hypnotic suggestion.”

Dr. Grover of Massachusetts related a case where a young woman in New England, afflicted with tuberculosis, had been cured through repeated hypnotic “ suggestions.”

The venerable Judge A. L. Palmer, who has recently resigned from the supreme bench of New Brunswick, said in his address to the Medico Legal Congress—in relation to this subject: “ This department of psychological medicine is one which all jurists are coming to

the conclusion, demands more examination in the future than we have been able, or even willing, to give it in the past.

"The relation of hypnotism to crime is forced upon judicial attention, and we must consider it, and be in a position to pass upon the questions it presents, in accordance with the well settled principles of law."

"When Professor Sidgwick, of Cambridge, at the head of the English Society of Psychical Research, is willing to assert as the result of a long series of experiments conducted by that body, his belief in telepathy, as he defines it, we may differ with him in his views and criticise the method of investigation in and by which he has made up his opinion, but we cannot avoid facing the issues presented, or escape considering the weight and force of the evidence on which it is based."

"I cannot claim to be even a student of the subject of the experimental side of psychical research, I have not been able to bring my mind to admit what is claimed by the more advanced students of the science, but I am of those who believe truth has nothing to fear from the investigations now proceeding in various parts of the world in this domain of scientific investigation, and I trust that the papers presented here will aid in the elucidation of questions of general public interest and concern."¹

Prof. W. Xavier Sudduth of Chicago, Chairman of the department of Experimental Psychology at the same Congress presented a paper, on hypnotism and crime, in which he stated :

"The wide difference of opinion regarding the relationship of hypnotism and crime existing in this country and Europe has long been a matter of comment. Prominent authorities on each side of the water, with but few exceptions, reject the idea of the possibility of successful criminal suggestions under ordinary circumstances, while many European writers freely admit and deplore the supposed possible misuse of this new odd force for criminal ends, although they cite no well authenticated cases to prove their fears.

"Many years' experience with use of hypnotism in laboratory and clinic, upon widely differing classes of subjects, makes me feel safe in saying that under all conditions when the subject is capable of carrying out a criminal suggestion he is sufficiently conscious of his own volition to decide whether he will carry out the suggestions or not. This being the case, he goes ahead regardless of the law of intent and becomes a 'particeps criminis,' an 'accessory before and after the fact,' and should be held equally guilty with the instigator of the crime. A criminal he surely is, but hardly a 'criminal character' in the sense in which I have been accustomed to use the term."

¹ Advance sheets Medico Legal Journal and Bulletin Medico Legal Congress.

Dr. U. O. B. Wingate late health commissioner of Milwaukee, Wisconsin and Vice-Chairman Section on Psychology, Medico Legal Society, in a valuable paper read before the International Medico Legal Congress at Chicago, August 1893, entitled "Suggestion not hypnotic, and crime," summarized his conclusions as follows:—

"1. There are many persons who are on the border line of irresponsibility.

2. Such persons only need certain forms of suggestion to cause them to commit criminal acts.

3. Suggestions of crime are largely disseminated by published sensational accounts of criminal acts and evil doings, and by certain pictures posted in public places.

4. Suggestion of crime is often contagious among a certain number of persons possessing partially unbalanced minds.

5. Organized effort can do much to prevent crime, by investigation and study of the phenomena of criminal suggestion.

6. Efforts should be made to suppress and regulate the production of the large amount of unhealthy suggestion now being disseminated, and such work is as important and promises as good results as the efforts being put forth to control contagious physical diseases."

Dr. T. D. Crothers of Hartford, one of the Vice-Chairmen of the Psychological Section Medico Legal Society in an article entitled "Hypnotism" says: "I am inclined to doubt this power to make a person do a criminal act, unless the mind is already criminal in its instincts."²

On the same subject Thomson Jay Hudson, Esq., of the Washington bar, author of the "Law of Psychic Phenomena," and other works, has contributed a valuable paper upon the "Legal Status of Hypnotism in Medical Jurisprudence."

Hudson adopts Berheim's definition of hypnotism "as the induction of a peculiar physical condition, which increases the susceptibility to suggestion," with one modification, viz, substituting the word "induces" for "increases."

Hudson accepts Liebault's views as now universally received of the law of suggestion among scientists with a few important exceptions.

This law is stated as follows:

"Persons in a hypnotic state are constantly amenable to control by suggestion."

Mr. Hudson combats the view of the Charcot school, who claim that hypnotism can only be induced in hysterical persons, and adopts

¹ Medico Legal Journal Vol. XI., p. 223, and Bulletin Psychological Section Medical Legal Soc. Vol. I., No. 4, p. 78.

² Bulletin Psychological Section Medical Legal Soc. Vol. III. No. 1, p. 30.

the contrary view, which is fast becoming universal among those who have investigated the subject.

He claims that hypnotism has no legitimate place in criminal jurisprudence, and while he concedes "that a criminal hypnotist, in control of a criminal subject, could undoubtedly procure the commission of a crime under exceptionally favorable circumstances," he illustrates that it practically in such a case would not be a legal defence on the ground: (a) Because, in the nature of things, a hypnotized subject can have no standing in a court of justice, as a witness. (b) The cross-examination of a subject as to the nature and extent of the suggestions made to him by the hypnotizer would be quite impossible and absurd.

Jas. R. Coeke, M. D., in a recent work published by the Arena Publishing Co., Boston, speaking upon this subject, says, "I personally do not believe that the average individual in the hypnotic state could be made to commit crimes," and quotes Prof. James of Harvard, as stating:

"That while for a time the will and other faculties are in abeyance, they are not wholly extinguished, and if that command is very repugnant to the hypnotized subject, he will not go beyond certain limits in its execution."

He cites an interesting experiment of a young girl thoroughly hypnotized, who could not be induced to stab a man with an actual knife, when commanded to do so, and he asserts in some thirty or forty experiments with different people, he had always similar results.

The more prominent cases which have excited the attention of the professions of law and medicine are:—

1. The Bompard Case. Within the scope of this paper the time will not permit a review in detail of this celebrated case, but the writer is of opinion that the general impression of scientists who have carefully studied it, agree that hypnotic suggestion did enter largely into the crime itself, in this instance.

2. The case of Czesław Lubieź Czynski has excited very great public interest. He was born in Turenk, Poland, and comes from an old Polish family. In 1890 he was a teacher of the French language in Craeow, Austria. Turning his attention to hypnotism, he went to Paris and began giving public hypnotic exhibitions, against a strong public prejudice existing in many European states. He was expelled from Bosen by the police, and resided in Dresden, where he met Baroness Hedvig von Zedlitz, a very wealthy, highly respected and religious woman of thirty-eight years, who responded to his advertisement, and whom he treated for her malady by hypnotic treatment, to which she submitted under his advice. This treatment at first, was by touching

with his hands the parts of her body where the sources of her illness were located, viz : the head and stomach. It lasted for several months, during which time their relations became more intimate and Czynski suggested to her, after he had placed her in the hypnotic sleep, love to himself. He represented to her that he was the last descendant of an old Lithaais ducal family, and for that reason their engagement and the subsequent marriage must be kept private. She followed his advice and the suggestions, and a false marriage was performed by a friend of Czynski, who personated a priest. He also made her believe that she was born to save his soul, and he undoubtedly, by hypnotic suggestions, controlled all her actions so far as the consent to that marriage and the relations which existed between them.

He was arrested Feb. 16, 1894, and was tried in Munich, Bavaria, Dec. 17, 1894. His trial lasted three days, and created a profound sensation throughout Europe. He was found guilty, convicted and sentenced to three years in prison.

3. The Kansas Case of MacDonald, acquitted by a jury upon the charge of the murder of Patton, whom he shot, and the trial and conviction of Gray, as an accessory before the fact, has excited great public interest. The newspaper press having very generally asserted that MacDonald was acquitted, and Gray convicted, on the ground that Gray had controlled MacDonald by hypnotic suggestions and influence over him to commit the act.

This case, however, has been misrepresented. Through the courtesy of Chief Justice Horton, of the Supreme Court of that state, and in communication with counsel for the defence of both Gray and MacDonald, the conclusion has been arrived at as stated in the "Kansas City Journal," which in commenting upon the decision of the Supreme Court, affirming the verdict of the jury, says "that Chief Justice Horton, of that bench," had stated "that hypnotism was not in any way whatever an element of the case," and the conviction of Gray was based upon the evidence of MacDonald, which clearly justified the jury in finding that he was an accessory in the killing before the fact; so the Kansas case must be dismissed from the consideration of the subject.

4. The Minnesota Case. The writer has not been able to investigate the details of this case, but thinks the view taken by H. Merriam Steele, Esq., in the April number of the "North American Review," the safe one to follow, and that it would be quite outside of any legal experience to accept, as entitled to any credit, the "waking story" of murder committed by the accused while under hypnotic influence. Such statements should be entitled to no credit, and no authority justifies the position that the subject, on awakening from

a hypnotic trance, could remember all or relate anything done while under hypnotic influence ; and it would be a very unsafe proposition of law in regard to testimony, to place a witness in a hypnotic trance, and to accept as truth the statements of events that he in that state described as having occurred at a previous time.

These four above cases are only cited, and the foregoing article submitted to show the urgency and importance of considering the general proposition as to how far hypnotic suggestion is a legitimate factor in determining criminal responsibility.

MECHANICAL RESTRAINT OF THE INSANE. ✓

BY CLARK BELL, ESQ., PRESIDENT OF THE MEDICO-LEGAL
CONGRESS.

The agitation of this subject recently in England has at last been settled by legislation, and by regulations of the Board of Lunacy Commissioners of that country.

The Lunacy Act of 1890, Section 40, made the application of Mechanical Restraint to any lunatic a misdemeanor, unless the restraint was necessary for surgical or medical treatment, or to prevent the lunatic from injuring himself and others, and made in compliance with the provisions of that Act, and under such regulations as the Board of Lunacy Commissioners should adopt as to the "Mechanical Means" to be employed.

The Lunacy Act of 1890, Section 40, was as follows:

LUNACY ACT, 1890, SECTION 40.

"(1.) Mechanical means of bodily restraint shall not be applied to any lunatic unless the restraint is necessary for purposes of surgical or medical treatment, or to prevent the lunatic from injuring himself or others.

"(2.) In every case where such restraint is applied a medical certificate shall, as soon as it can be obtained, be signed, describing the mechanical means used, and stating the grounds upon which the certificate is founded.

"(3.) The certificate shall be signed, in the case of a lunatic in an institution for lunatics or workhouse, by the medical officer thereof, and in the case of a single patient, by his medical attendant.

"(4.) A full record of every case of restraint by mechanical means shall be kept from day to day; and a copy of the records and certificates under this section shall be sent to the Commissioners at the end of every quarter.

"(5.) In the case of a workhouse, the record to be kept under this section shall be kept by the medical officer of the workhouse, and the copies of records and certificates to be sent shall be sent by the clerk to the guardians.

"(6.) In the application of this section 'mechanical means' shall be

Read before the Medico-Legal Congress, September 4, 1895.

Read before the Medico-Legal Society.

such instruments and appliances as the Commissioners may, by regulations to be made from time to time, determine.

“(7.) Any person who wilfully acts in contravention of this section shall be guilty of a misdemeanour ”

The following regulations were made by the Commissioners on Lunacy as to instruments and appliances for the Mechanical restraints of Lunatics, on the 17th day of April, 1895, to take effect on July 1st, 1895, and the prior regulation of April 9th, 1890, was rescinded and superseded by the later action.

The Regulation now in force as to all institutions in England and Wales, is as follows :

REGULATION.

In pursuance of Sub-section 6 of the above section of the Lunacy Act, 1890, the Commissioners in Lunacy, by this Regulation under their common seal, do hereby determine that “mechanical means of bodily restraint” shall include all instruments and appliances whereby the free movements of the body or any of the limbs of a lunatic are restrained or impeded, but that the following instruments and appliances only shall be made use of for such purpose:—

1. A jacket or dress, laced or buttoned down the back, made of strong linen, with long outside sleeves fastened to the dress only at the shoulders, and having closed ends to which tapes may be attached for tying behind the back when the arms have been folded across the chest.

2. Gloves without fingers, fastened at the wrists with buttons or locks, and made of strong linen or chamois leather, padded or otherwise.

3. If the continuous bath be employed, the use of a cover to the open bath, with an aperture therein for the patient's head, shall be deemed to be mechanical means of restraint.

4. The wet or dry pack. If, and when, either is used, the patient shall be swathed in sheet and blankets only, the outer sheet being, if necessary, sewn or pinned. No straps or ligatures of any kind shall be used, and the patient shall be released for necessary purposes at intervals not exceeding two hours.

5. Sheets or towels when tied or fastened to the sides of a bed or other object. When these are used only for the purpose of forcible feeding, and merely held by attendants, and not tied or fastened, their use shall not be considered to come under the head of mechanical restraint.

It is essential to the safe employment of any of these forms of restraint, except No. 2, that the patient be visited frequently by a medical officer, that he be kept under continuous special supervision by an attendant, and that under no circumstances he be left unattended; and is hereby so ordered.

The Commissioners direct that at each visit of Commissioners or a Commissioner to an asylum, hospital, or licensed house, or to a single patient, all instruments and mechanical appliances which may have been employed in the application of bodily restraint to a lunatic since the last preceding visit, be produced to the Visiting Commissioners or Commissioner by the superintendent, resident medical officer, or resident licensee, or the person having charge of the single patient.

It will be seen that the section requires that in every case where mechanical restraint is applied, a medical certificate describing the mechanical means used, and stating the grounds upon which the certificate is founded, be signed in asylums and hospitals by the medical superintendent, in licensed houses by the resident or visiting medical practitioner, in workhouses by the medical officer, and, in the case of single patients, by the medical attendant; that a full record of every case of restraint be kept from day to day; and that a copy of such records and certificates be sent to the Commissioners in Lunacy at the end of every quarter.

In framing this Regulation, in which they have defined the "mechanical means" which may alone be used in the imposition of restraint, the Commissioners in Lunacy have merely discharged the duty cast upon them by the enactment quoted above; and they desire to guard themselves most strictly against the supposition that they have thereby given any greater countenance to the employment of this form of treatment than they have hitherto shown.

While recognizing, as the enactment recognizes, the possible occurrence of cases in which its employment may be necessary and consistent with humanity, they remain of opinion that the application of mechanical restraint should always be restricted within the narrowest possible limits, that it should not be long continued without intermission, and that it should be dispensed with immediately that it has effected the purpose for which it was employed.

This Regulation shall come into operation on the 1st day of July, 1895, on and from which day the Regulation of the 9th April, 1890, shall cease to have effect, and a copy shall be inserted at the beginning of every register of mechanical restraint.

Sealed by order of the Board,

G. HAROLD URMSON,

19 Whitehall Place, London, S. W.,

Secretary.

the 17 day of April, 1895.

It will be observed that the instruments are specially named and carefully described:

1. Linen jacket.
2. Gloves without fingers.
3. The continuous bath.
4. The wet or dry pack.
5. Sheets or towels with specified uses.

The Commissioners disclaim giving any greater countenance to the employment of this form of treatment than they had hitherto shown, and while they acquiesce in the

Act as recognizing the possible occurrence of cases in which its employment may be necessary and consistent with humanity, they assert that "they remain of opinion that the application of mechanical restraint should always be restricted within the narrowest possible limits, that it should not be long continued without intermission, and that it should be dispensed with immediately that it has affected the purpose for which it was employed."

This settlement of the agitation in England by legal action and regulation of a vexed question, makes concessions to those superintendents, who lack the ability to manage the insane without it, which are intended to prevent the abuse of the use of mechanical restraint by those who deem its use necessary.

It is a step backward and not forward. Without these regulations, or even under them, Dr. William Orange would never have occasion to use them in the control or management of the insane, and a large number of British superintendents of asylums who deem them both unnecessary and unwise.

If a surgical operation was to be performed on a man, sane or insane, the surgeon operating would of course place and secure the part for the operation, but he should not discriminate between the patient, sane or insane.

It is doubtful if serious abuses could arise in British asylums under the new regulations, but the Commissioners can not, by their disclaimer, escape the responsibility, while their action justifies the use of certain forms of mechanical restraint in the discretion of one medical superintendent, which one of the large and cultured experience of Dr. Wm. Orange in Great Britain, Dr. Magnan in France, the late lamented Bryce, or Dr. Alice Bennett in America, would not consider necessary or even proper.

There are superintendents who could not see their way to

manage an insane patient without restraint, and there are superintendents who, without the slightest difficulty, would successfully manage the same patient most successfully without it. There is a vast difference in the morale and the character of patients in different countries.

While recognizing the value of regulations as to restraint in preventing grave abuses, I should deprecate the adoption of such a regulation in American asylums as has just gone into effect in England. Those who dispense with mechanical restraint as unnecessary in the care and management of the insane, among asylum superintendents, do not need such regulations. It is impossible to overlook the legal permission such regulations give, to resort to it by unskillful and illy fitted men, who may deem it necessary in good faith on their part, under conditions, where competent officers would not permit it, or think of its use.

It is a question of *savoir faire* of the superintendent. If the law restricted its use to actual surgical operations it would not be censurable, but "necessary for medical treatment," is too broad language.

No case of abuse of restraint has arisen that an incompetent superintendent might not in good faith have deemed necessary.

There is a difference in the morale and material of the inmates of a British asylum and an American one, so that we must observe each to distinguish. It would be a step backward in American asylum treatment to permit the use of mechanical restraint, against a very general public feeling that its disuse would, on the whole, be a greater good to the whole body of the insane than its use restricted under regulations, which would put it in the power of uneducated and incompetent superintendents to restrain in the ordinary daily management of the insane in institutions for their care and treatment.

For example, the legislation and regulations would, if adopted, legalize the use of the prolonged bath as a means of mechanical restraint in scores of American asylums, where the use of such a thing is never resorted to at all. Is this progress? Is it wise legislation? The British Board of Lunacy Commissioners seem not to have the courage of their convictions.

THE DUTY AND RESPONSIBILITY OF THE ATTENDING PHYSICIAN IN CASES OF RAILWAY SURGERY.

BY CLARK BELL, ESQ., PRESIDENT OF THE MEDICO-LEGAL
CONGRESS.

In a paper read before the Section upon Medico-Legal Surgery, of the Medico-Legal Society, one year ago, upon the "*True Field of Duty of the Railway Surgeon*" I defined the Legal position of the Railway Surgeon, especially where he acted as the attending physician of the party injured, and gave my views as to the safe rules he should adopt as governing his professional conduct. They may be thus summarized:

1. Under no circumstances should the Railway Surgeon who has attended the patient, act directly or indirectly as an adjuster of claims in the case.

2. Under no circumstances should the attending Surgeon act as the Attorney of the Railway or other Company, in the matter of the adjustment or settlement of a claim, nor in relation to influencing the patient to settle his claim.

3. As he has been the attending Physician and Surgeon of the injured man, he can in honor take no step against him, or that would injuriously affect his rights. His relation as a Surgeon of the Railway Company, although it may have been well understood by the patient, places the Surgeon under no obligation to the Railway Company to act in the slightest degree with injustice towards the patient.

4. His duties may be defined generally as follows:

a. To fairly and truthfully advise the patient of the nature, character and extent of his injuries, if requested so to do.

b. To so advise the Railway Officials, Counsel, and Adjuster, though perhaps an exception should be made, in the interest of the patient as to facts and knowledge obtained from the patient confidentially, or in treating the case, which would prejudice the patient's rights and interests. In such a case, were I the private counsel of the Railway Surgeon, I should advise him that, as to such facts or knowledge, his lips should be

Read before the Medico-Legal Society, November, 1895, and ordered published in the proceedings of the Medico-Legal Congress.

sealed as closely as would be those of a family physician, were he in charge of the case for the patient.

c. The entire responsibility of the compromise, adjustment, or defense in the courts of a claim for damages should be left by the Railway Surgeon with the Attorney of the Company and the Adjuster of claims.

d. The Railway Surgeon should take no part in it, pro or con, beyond a fair, honorable, conscientious statement of the facts of the case and the nature, character, and extent of the injury to the proper Railway Officials.

e. Duty as a witness.

In cases where the controversy results in a litigation, his evidence should be that of simply describing the actual facts of the case, the treatment, and to a description of the nature, character, and extent of the injury, holding the scale of his judgment as evenly balanced between the patient and the company as it is in his power to do.

In that paper I embodied the carefully prepared views of leading Railway Surgeons upon this subject, (*Vide Medico-Legal Journal*, Vol. XII, p. 374 et. seq.) from which I make brief extracts because time prevents quoting at length.

Surgeon General Nicholas Senn, Vice-Chairman of the Section of Medico-Legal Surgery:

("There has been too much attention paid by Surgeons to the settlement of claims against railroads. The proper function of the Railway Surgeon is to attend to sick and injured as he would to private patients and leave all legal matters to the proper authorities.")

Chief Surgeon C. K. COLE, G. N. Ry., Ex-President American Academy of Railway Surgeons, and Vice-Chairman Section Medico-Legal Surgery:

"The consensus of opinion among both Railway Surgeons and Medical Men generally, as well as the legal fraternity, is that there is too great a tendency for the Railway Surgeon to feel, when litigation on account of damages occurs, that he must be actively partisan in behalf of his company." * * * "To give clear medical testimony without prejudice or partiality, is unquestionably the chief function of the Railway Surgeon in his relation to the courts; and when he departs from this rule, and shows that his statements are biased, or it is shown that his actions, and especially his treatment of the case prior to the trial, have been those of a partisan, he at once lessens his influence with all concerned, including the court, and loses CASTE with the patient, the railway, and, most important, with himself."

Chief Surgeon S. S. THORNE, Vice-Chairman Section Medico-Legal Surgery, Ex-President National Association of Railway Surgeons:

"The duties of Railway Surgeons, if well performed, should be satisfactory, if held within strict limits. No going outside."

Chief Surgeon W. B. OUTTEN, N. P. Ry. System, Vice-Chairman Section Medico-Legal Surgery, Ex-President National Association Railway Surgeons:

"The true line of duty of the Railway Surgeon is essentially the same as that of any honest man." * * * "When he essays the function of claim agent or attorney he ceases to be a surgeon, and essays a function which the nature of his business and training unfits him for." * * * "The Railway Surgeon should never permit his prejudice to thwart his judgment; partisanship in his position soon leads to not only loss of respect on the part of his employer, but of all with whom he may be brought in contact." * * * "The Railway Surgeon's duty is at times four-fold,—his duty to himself, his duty to his patient, his duty to his employer, and his duty to the community. If he is true to the first two duties, the two last will never suffer." * * * "The true line of the Railway Surgeon, then, must consist in honest, effective knowledge of his function, along with the true, exact, and strict performance of the same."

Chief Surgeon JOHN E. OWENS, Chic. & N. W. Ry. Co., President American Academy of Railway Surgeons:

"Your communication of the 12th ulto., referring to a short paper on 'The true line of duty of the Railway Surgeon,' received. I am fully in accord with your view of the proper relation of the Surgeon or Medical Man, to the cases of railway injuries which he may be called upon to treat. I have never considered it in any sense my duty to go beyond that of Surgeon or Medical Man." "I have never entered the field of the adjuster of claims, and feel sure that his duties and those of Surgeon and the Medical Man, are incompatible with each other; nor have I ever encouraged our local or district Surgeons to assume the duties of adjuster, or in any such manner meddle with the case."

Chief Surgeon B. F. EADS, T. & P. Ry. Co., Ex-Comm. Section of Medico-Legal Surgery:

"The Surgeon's duty is to act solely as a professional man, i. e., doing the best that can be done for sick or injured employees, and see that railway companies are not swindled or defrauded by unjust claims brought by employees or passengers. He should in no wise debase his profession by lending himself as a claim settler in the interest of the railway companies."

Chief Surgeon J. R. STUART, H. & T. Ry., Houston Texas:

"Briefly I am opposed to the Railway Surgeon effecting settlements, of any nature whatsoever with the injured employees of lines under his direction." * * * ("Experience teaches me that expert testimony by

Railway Surgeons in the courts of this State, goes for nothing, and is not treated with any consideration by the juries.")

Surgeon R. HARVEY REED, M. D., Ex-Treasurer National Association Railway Surgeons, and Editor of its Journal:

"The Railway Surgeon should confine his duty, as far as possible, to the care of the sick and wounded." * * * "As a witness he should neither be for the defense nor the prosecution, but should be a scientific witness to bear testimony on the scientific facts presented in the case. Whilst there may be circumstances in which a Surgeon might to advantage act as a claim agent in settling claims between an injured party and the company, yet, I think, as a rule the attorneys should attend to this business, and the Surgeon should attend to that which comes directly within the pale of his professional career."

Prof. E. R. LEWIS, M. D., Treasurer National Association Railway Surgeons:

"I feel certain that I coincide with you, upon the relation of the medical department to the claim department, and believe the two departments to be as distinct as it is possible for two departments of any corporation to be. I certainly do not believe it is at all practicable or feasible for the medical department to come in any way in contact with the claim department, in so far as the dickering for settlement of the injured is concerned, and I do not believe any claim department will respect the company's medical employees who will consent to dicker with patients for them."

Chief Surgeon C. A. SMITH, Cotton Belt Route:

"Surgeons connected with the medical departments of our railways, owing to the very nature of the case, must, of necessity, become very intimately connected with the law department; but, in my opinion, should never be under its direction, or be made a part of it, but always be maintained as a separate and distinct department." * * * "I do not think that Railway Surgeons should act as claim agents for their companies." * * * "No undue influence should be attempted in obtaining statements relative to how the accident happened, always remembering that it is 'the truth, the whole truth and nothing but the truth' that is wanted, also remembering that nothing can bolster up a lie or truth half told; state facts in your reports. In testifying before courts of justice, always stick to the exact facts in the case, neither turning to the right or left, no matter what the consequences may be to the corporation."

Surgeon R. S. HARNDEN, Late President Erie Ry. Surgeons, President N. Y. State Association Railway Surgeons, Vice-Chairman Section Medico-Legal Surgery:

"The Railway Surgeon should not under any circumstances, become the claim agent, or assume the functions of the attorney in the case. He must not discuss the question of claims, from a monetary standpoint, so far as it applies to the actual settlement. He should be only an advisor

to his company, manager, or even the claim agent, from a medical standpoint."

Surgeon GEORGE CHAFFE, M. D., Late President N. Y. Association Railway Surgeons, Treasurer Section Medico-Legal Surgery of Medico-Legal Society :

"Many Railway Surgeons do not know, or if they do know, they seem to forget that they are only employed to do Surgical and Medico-Legal work. When the question of compensation arises the position is indeed delicate, and the man who is able to use common sense, or tact and good judgment, and do little talking, will serve his company well. When a Railway Surgeon assumes the role of attorney or adjuster of claims, his services should be dispensed with."

I quite agree with Judge Abram H. Dailey in his valuable contribution to this subject, as to the legal responsibility assumed by the attending surgeon, who takes charge of the case of one injured in a railway accident.

The fact that the surgeon may be the official surgeon of the Railway Company on which the injury occurs, does not change either the duty or the responsibility of the attending surgeon.

It may be safe for the surgeon to say, that as his act is voluntary, and he of his own act assumes the relation of attending physician to the injured one, he accepts all the duties, obligations and responsibilities of that position.

His first duty is to the injured, his treatment and restoration. The surgeon's duty and relation to the company is therefore secondary to the relation of physician and patient. Secrets obtained in the discharge of his professional duty are as sacred as if he was not the surgeon of the company. The high moral obligations of secrecy and silence on all questions prejudicial to the injured, should be sacred, and must be so regarded by every high minded surgeon.—(*N. Y. Code Civil Pros.* § 834.)

The attending surgeon, therefore, has no right to take any step, withhold or give any information derived in his professional conduct of the case, or confidentially disclosed

to him by his patient, while under his charge and treatment, the effect of which would be disastrous or injurious to his patient, and I concur fully with the views of my colleague, Judge Abram H. Dailey, in the view he expresses on this point. In the case cited by this learned jurist of the fraudulent release obtained by the attending physician, the physician was guilty of a crime, he deserved punishment.

In my judgment and experience, such cases as are cited by Judge Dailey, are fortunately rare.

Railway corporations are, as I believe, as a rule disposed to make fair and honorable settlements, notwithstanding the constant and increasing evil of false, fraudulent and exaggerated claims, so constantly arising, by the connivance of scoundrels in the legal and their rascally confederates in the medical profession.

Disreputable lawyers, as is well known, unblushingly make a deliberate business of bringing claims against railway corporations. Well known instances occur in this city, of scavengers of the profession who have amassed fortunes by dividing with claimants the sums they get from the railway corporations.

They employ agents and assistants to watch any accident on the elevated railway especially, and at once solicit the case, under an agreement to divide what they can get, whether they know the injured or not.

In some cases they don't wait to make arrangements with the injured, but commence the action without retainer, on an unverified pleading, so as to prevent the sufferer from employing other counsel, and in one case reported to me by the attorney of the injured, one refused to withdraw his unauthorised suit, until he was threatened with proceedings to disbar him.

Legal cormorants of this class have greatly demoralized

railway corporations. Statements of false and fraudulent claims by so-called medical men, exaggerating and magnifying the injuries, constantly confront the corporations, and thwart its better intentions.

Frequently they are not permitted to look at or meet a case upon its merits, and they are often forced to yield to these robbers, clothed in the robes of an honorable profession, rather than run the risk of a trial with perjured and doctored medical testimony; for medical testimony and aid, I regret to say, can be obtained and is used by this class of attorneys everywhere, and often with great effect.

Medical advisers of railway corporations, in this class of cases, have to fight fire with fire when thus confronted.

The Railway Surgeon, for example, knows that the case is fraudulent.

He knows that it is in charge of a disreputable attorney, who usually has a lien on the claim of which he has given the company notice. He knows, or has good reason to fear, that the medical witness has a contingent interest in the recovery.

He has acted, perhaps, as the attending physician of the injured party, so that he is professionally tied by the obligation a physician owes to his patient, not to divulge his secrets, nor to do anything to his injury.

I know of no more trying position than that of a railway surgeon in such a case. Has he the right to expose the fraud?

How can he give the real facts to the corporation, without violating the professional obligation he is under to the patient?

As to the question raised by Judge Dailey regarding the Railway Surgeon as an expert, in my opinion it answers itself.

I quite agree with Chief Surgeon Stuart, of Houston, Texas.

No railway company should ever think of calling its surgeons as expert witnesses, especially the attending surgeon. He can refuse to go, and if he does, juries give no heed to his testimony.

Medical expert testimony has fallen to a very low state in our courts, even in ordinary cases. It is at once assumed by juries that the railway surgeon is the paid employee of the corporation, as much as the counsel, and it must be a man of commanding position, and of the highest integrity, whose opinion in such a case would impress the jury.

Railway counsel should, I think, as a rule never call or use it, if possible to avoid it, and only in clear cases of fraud as to facts, as any other witness within its knowledge, and not as an expert, or as to his opinion on the case.

No objection could be raised to having the court name a disinterested witness to examine and testify as an expert, under the statute cited by the learned Judge. But the safer rule for both the railway surgeon and his corporation is to keep him off the stand as an expert witness, especially if he has the slightest connection with settling or adjusting the claim for the amount of the damages. There is no exception within my knowledge or experience of where courts and juries have failed to heavily mulct a corporation detected in such a transaction, as the records in the courts clearly show. My previous paper refers to decisions in cases of this kind.

THE NEW LUNACY STATUTE IN NEW YORK.

BY CLARK BELL, ESQ.

We have not space to give the act passed by the last legislature, in full, which we regret.

Sections 60, 61, 62, 63 and 64, relate to the commitment of the insane, and inaugurate an entirely new system. Among the most important of the changes in the law of commitments of the insane, are the following:

1. No insane person can be hereafter committed to an insane hospital, except on the order of a Judge of a court of record, This is a wholesome provision and will, we trust, do away with all occasion of scandals regarding improper commitments.

Notice of the application for the order of commitment must be served, personally, on the alleged insane person, unless the judge for cause shown dispense with it, or direct substituted service upon some person named by him. The language of the section is as follows:

"Notice of such application shall be served, personally, at least one day before making such application, upon the person alleged to be insane and if made by an overseer or superintendent of the poor, also upon the husband or wife, father or mother or next of kin of such alleged insane person, if there be any such known to be residing within the county, and if not, upon the person with whom such alleged insane person may reside, or at whose house he may be. The judge to whom the application is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him. He shall state in a certificate to be attached to the petition his reason for dispensing with personal service of such notice, and if substituted service is directed, the name of the person to be served therewith."

This may seem a radical change to many medical men, but it is strictly in accordance with all legal proceedings involving the liberty of the citizen that we think on trial it will be found effective and allay the agitation in the public mind upon this subject.

3. No idiot shall be received by or committed to any State Hospital for the Insane.

The State Board of Lunacy Commissioners are directed to provide new forms and they have issued a circular letter, which is so important that we give it in full:

STATE OF NEW YORK—STATE COMMISSION IN LUNACY.

CARLOS McDONALD, M. D., President,	} Commissioners.
GOODWIN BROWN,	
HENRY A. REEVES,	
T. E. MCGARR, Secretary.	

ALBANY, June 15, 1896.

To Judges of Courts of Record, to the Medical Profession and to Public Officers having duties to perform relating to the insane:

The legislature of 1896 enacted a general codification of the lunacy laws, which is known as chapter 545 of the laws of 1896, and which constitutes chapter 28 of the general laws of the state. In order that the members of the medical profession may have full knowledge of the lunacy law as it now stands, a copy of chapter 545, laws of 1896, is enclosed herewith.

The above act takes effect on July 1, 1896. On June 30, the methods of procedure relating to the commitment of the insane which have been in force since July 1, 1890, will cease to be operative, and beginning on the following day, July 1, the new method of procedure will be in full force, and thereafter no insane patient can be admitted to any of the institutions for the insane, public or private, except in conformity to the provisions of that act.

During the latter part of the year 1895, there was some discussion in the public press of the subject of the commitment of insane persons to institutions, and specific cases were cited which were supposed to afford ground for the belief that the existing law did not provide sufficient safeguards against unlawful or improper commitments.

The discussion led to the expression of a sentiment, which, while untenable and unwarranted, seems to have been held in some influential quarters, not, however, including the medical profession, in favor of a stricter legal procedure in regard to the commitment of lunatics than then obtained; and in apparent response to this sentiment, a bill to modify the existing law on this subject was prepared for introduction in the recent session of the legislature, and with some modifications its substance was incorporated in the general revision of the lunacy laws.

The commission does not believe that there was any real or sufficient basis in fact for this sentiment; and so far as concerns the security of personal liberty or the preservation of the rights of any person who might become an inmate of an institution for the insane, it did not think that any material modification of the existing system was needed. But the legislature took a different view of the matter, and prescribed a procedure which must hereafter be observed.

Upon a cursory reading of the statute an impression may be left on the

mind that the new law works many radical changes in respect to the commitment of insane persons, but it is believed that careful examination and comparison with former statutory provisions will show the modifications made in them to be less extensive, and perhaps less serious, than at first appears; and it is hoped that any anticipated embarrassment or evil resulting from delays at critical periods or from enhanced and unnecessary publicity, will, in the practical operation of the law, prove to be not actually important.

For whatever temporary or even lasting private hardships the statute may impose, there is a measure of public compensation in the fact that the method to be followed calls for greater care than before. Under this act the commitment of an insane person becomes, in a much higher sense, a judicial procedure; in fact, hereafter, no person can be admitted to or confined in an institution for the insane, except upon an *order* of a judge of a court of record.

Some time before the first of July the necessary blanks, which the commission will endeavor to make as complete as possible, will be in the hands of all county clerks, county or city superintendents of the poor, and on file in the offices of the various state hospitals and private institutions for the insane. They may also be had on request from the office of the commission at Albany.

For convenience of reference the commitment blanks will contain the principal sections of the new statute, relating to the commitment of the insane.

The method of procedure in brief is as follows:

Application for the commitment of an alleged insane person may be made by any person with whom such insane person may reside or at whose house he or she may be, or by his or her father, mother, husband, wife, brother, sister or child or other next of kin, or by the superintendent of the poor of the county, commissioners of charities of the counties of New York and Kings, or the overseer of the poor of the town or city wherein such insane person may be. The proceedings are to be initiated by a petition of the applicant containing a statement of the facts upon which the allegation of insanity is based, signed and verified by him, to which must be annexed the certificate of lunacy executed by two legally qualified medical examiners. Such papers must then be presented to a judge, of a court of record, i. e., a justice of the supreme court, a county judge, a surrogate, or certain judges of city courts which are declared by statute to be courts of record.

Notice of the application should be served personally upon the alleged insane person, and, if made by a county or municipal officer, upon the husband or wife, father or mother, or next of kin, if there be any residing within the county, of said person. *The judge may dispense with such personal service, or direct substituted service upon some persons named by him.* In such case the judge is to attach to the petition a certificate, stating his reasons for dispensing with personal service, or if substituted service is directed, the name of the person to be served.

It is not expected that the examiners will do more than properly fill out the certificate of lunacy, as has been the custom heretofore, and the new form of certificate is substantially the same as has heretofore been in use. The examination must be made by two qualified medical exami-

ners, jointly, and the certificate must be executed and dated upon the day of such joint examination. *The order of commitment must be granted within ten days from the date of the certificate.*

The petition, the certificate of lunacy, and the various necessary orders, are printed as one form, and will be known as form 472 of the forms of the State Commission in Lunacy, and in ordering blanks it will only be necessary to refer to this form number. The parts of this form, five in number, while they are bound together, are so arranged as to permit of the insertion of additional papers of reference when required, and care should be taken that the page and line where matter is to be inserted are carefully indicated.

It should be noted that the law requires that the petition and all the papers relating to the commitment of an insane person must be made *only* upon forms prescribed and furnished by the commission.

It is respectfully suggested that in proceeding under the new statute it should be carefully read and its contents understood before final action is taken, and attention is particularly called to Section 60, of Chapter 545, Laws of 1896, which among other things provides as follows: "No idiot shall be committed to or confined in a State hospital."

BY THE COMMISSION:

T. E. MCGARR,
Secretary.

The whole act is under consideration by a committee named by the Medico-Legal Society, who will report early next winter on the merits of the bill, which was passed hurriedly and without careful consideration or discussion.



PROMINENT MEMBERS OF THE MEDICO-LEGAL SOCIETY.

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Health Officer, Bridgeport, Conn.

THE FUTURE OF RAILWAY SURGERY.

BY CLARK BELL, ESQ., PRESIDENT MEDICO-LEGAL CONGRESS
OF NEW YORK.

Whatever may be said or thought of the claim that medicine was not an exact science, by its enemies, its devotees, or its friends; no one can, in the light of the wonderful progress made in modern surgery, in the single generation since the American Civil War, deny or question even the scientific precision now attained by its great leaders and exponents in the practice of surgery.

The steps by which the science of surgery has advanced in our day and generation have been grand and stately, as they have been effective; and as valuable to mankind, as they have been wonderful—yes, almost marvelous in results.

In 1861 a gun-shot wound of the abdomen was regarded as almost necessarily fatal; to-day, as illumined and illustrated by surgeons Nicholas Senn, J. N. Hall and other masters of this branch of surgery, an explanation would be rightfully and lawfully demanded of the surgeon who lost such a case, of the reasons of his failure.

In abdominal surgery, especially in woman, in my boyhood the ablest and most successful surgeon in western New York, where I then resided, told me that he frankly stated to his patients, before operation, that the risk of life or death was almost even in cases of ovariectomy.

See that great army of suffering women of the past, that with a courage higher than that of the soldier who faces death in battle, because without its stimulating excitement,

Read before the National Association of Railway Surgeons, May, 1896.
Read before the Medico-Legal Society, May 20, 1896, and ordered printed also in the Bulletin of the Medico-Legal Congress.

has faced and met death under the knife of the surgeon, who was then ignorant of what is now universal knowledge in the practice of the art.

We lament the ignorance and superstition which swelled the vast army beyond the Styx ; of widows burned on the funeral pyres of their dead husbands ; but is that concurrence, vast as it may seem, greater than the mothers and daughters of our forefathers, who thus perished for the want of that light in surgery, whose rays are to-day as effulgent as the sun ?

I remember Mr. Lawson Tait, announcing in the *British Medical Journal*, not a great many years ago, that brilliant record of six hundred cases of abdominal surgery in women, without the loss of a single life ; and to-day, the properly equipped and skilful surgeon, who lost such a case by his own fault, could be made to respond in damages, if sued for mal-practice, as all now agree he should be made responsible.

Electricity has thrown upon surgery a brilliant, a marvellous, a penetrating and a wonderful light, of incomparable value, and incalculable worth.

With its magic lantern, it has illumined much of the human body to the eye of the surgeon, hitherto veiled, dark, and inaccessible, while the new Röntgen ray, or its recently discovered properties, opens the outer door of a vestibule to a yet unexplored gallery of human knowledge, in surgical science, as amazing in its results, even thus far reached, as it is counter to the generally hitherto accepted views of man. We are facing some marvellously strange facts just now in physics, when we find a light that passes through solids and metals at will ; but which, with great difficulty, penetrates glass, through which the light of the sun passes readily, and we are considering whether we shall recast our definitions of the word "opaque" as applied to matter, and are searching for that unknown, mysterious,

yet silent force, that stronger than gravity and over-powering, and in spite of it, makes the shoot of grain grow and stand erect, and advance upward like the tree, which under the nurturing hand of nature produces, when undisturbed by extraneous influences, some of the most beautiful and graceful objects in the created universe.

All the sciences act as hand maidens to surgery, and pour into her lap the wealth of their discoveries.

Chemistry, which stands as a base and corner stone for the whole structure of the physical sciences, the prolific mother of the wealth of the whole world, stands to surgery, as he who rolled away the stone from the sepulchre two thousand years ago, opening the door through which the light comes forth to glorify and illumine, and by which we see that before hidden and unknown.

It is doubtful if there is anything that really exists, which can properly be called new. Whatever is always was and must be old and from the beginning.

Chemistry knows all. To her nothing is new. She simply, now and then, withdraws the veil which obscures the imperfect human vision and reveals to her favorites, little by little, that which she may have before blazoned at noonday, in the pre-historic times, to her favored priests who then kept alive the sacred fires upon the altars within her temples.

She has her favorites and she lifts a corner of the curtain to such superb students as Edison, Tesla and Röntgen, from which come glances and flashes of a light incomparable and brighter than the noonday sun, to teach us how limited is the sum of present human knowledge, of the great truths of nature, and how little the wisest man does really know of what may be some day attainable and general human knowledge.

Truths are truths, entirely independent of human ap-

preciation or perception, and the limitations of human knowledge do not offset, change, or even modify them.

The knowledge of a few of the mysteries of electricity furnished to mankind by the wizard Edison, were truths before, and would have been truths had Edison died in his boyhood; and the quality of the cathode ray was neither changed nor modified by the genius of Röntgen in its discovery.

The microscope, the spectroscope, the marvels of photography, the ripe labors of the bacteriologist, the whole field of advance in antiseptic surgery, the wonderful inventive genius of man in the construction and adaption of instruments and appliances for surgical work, electricity as a force in the delicate mechanics of surgery, and notably of the saw, with its almost incredible velocity, so admirable in delicate operations upon bone and cartilage, and of producing at will, and in exact locations, intense heat, not to enumerate many aids now at the ready surgeon's hands, place the surgeon of to-day on an immeasurable height above even the surgeon of 1861.

The railway surgeon then enters a field quite new in the domain of surgery in the past, but he is armed *cap à pie* and he has a great future.

The first railway was built after the close of the first quarter of our century. It was a slow growth at first, but has become now, upon the American continent especially, the foremost factor in development and in the advancing march of civilization. Its surgery has a field wholly its own. It represents and protects an enormous class, whom it treats in cases of sickness or accident, and whom it has to regard as well, in protecting against accident, and in guarding so far as possible, by precautionary measures, the employees of the railways and the great public who travel upon them.

The mission of railway surgery should be :

1. To arrive at the highest stage of excellence in ability to treat the injured.

2. To establish the Railway Hospital as a fixed system on railway service, the better to execute the first great duty and to give to the most exposed class, the employee, the very highest and best surgical service combined with the greatest economy to both railway and sufferer, be he employee or passenger.

3. Prevention of injury upon railways so far as possible.

4. Improved sanitary measures in the interest of the general public in the transportation of passengers, to prevent infection or the spread of contagious diseases.

TOXICOLOGICAL.

✓ ARSENICAL POISONING AND CIRCUMSTANTIAL EVIDENCE.

The death of George E. Crozier, wife murderer in Auburn Prison, N. Y., in August, 1896, recalls a most interesting case of wife poisoning, by arsenic, in July, 1875, in Benton, Yates County, N. Y.

Mrs. Crozier had been ill only three days before her death, and during her illness had exhibited symptoms which defied the attending physicians in their attempt to diagnose her disease. On the Saturday following she was buried and nothing more was thought of the case for some time.

But the preference shown by the husband for a young girl living in the neighborhood gave rise to grave suspicions. Finally, in October of the same year, in response to frequent requests, Dr. Frank Tompkins, one of the coroners of the county, impanelled a jury. The body was exhumed and on examination by Professor John W. Towler, of Geneva, the fact was revealed that Mrs. Crozier died of arsenic poison, a large quantity of the poison being found in the stomach and liver.

He was indicted and tried at the Yates Circuit in March, 1876, most ably defended but convicted and sentenced to death. This sentence was commuted by the Governor to imprisonment for life.

The theory of the prosecution was that being unable to procure a divorce from his wife, so as to be able to enjoy his criminal intimacy with his new love, he hit upon the plan of poisoning as the easiest way of getting rid of her.

The conviction was on circumstantial evidence and the testimony of the chemist, from Hobart College, at Geneva.

He served twenty years before his death, and it is probable that the conviction and sentence was just. While circumstantial evidence frequently points with most unerring certainty to the guilty party, it is an undisputed fact, that so many cases of innocence have been subsequently illus-

trated, after conviction, when not a doubt existed in the mind of the jury or the public, that it is safer to commute a sentence based on circumstantial evidence alone, than to find after execution of the sentence that the accused was innocent.

The case cited by Mrs. Sophia McClelland in her paper read before the Medico-Legal Congress, is a case in point, and the experience of our Criminal Courts and Judges show that quite a percentage of such cases actually occur.

These illustrate the wisdom of the legal maxim, that "*It is better that ten guilty ones should escape punishment, than that one innocent one should be put to death.*"

KLEPTOMANIA.

This crime was brought into consideration at the Congress of Criminal Anthropology by Prof. Lacassagne, corresponding member of the Medico Legal Society, and editor of the Journal of Criminal Anthropology, of Lyons, France, by a paper from which we make some extracts:

"He divides these women thieves into three categories. The 'collectionneuses,' who steal without need, merely for the pleasure of possessing, are the first. Then come the 'desequilebres,' whose minds have not a perfect poise. The greater part of these are rich women. Many of them, after yielding to the first few impulses to steal, become decided thieves and utterly incapable of resisting temptation.

"He mentioned one such woman as having purchased goods to the amount of 200 francs in a Paris magasin. Passing out of the store she stole a sponge valued at twelve sous. On another occasion the same woman made some large purchases and then stole a fifteen-cent pocket-book to give to her cook.

"The third category of these women thieves comprises those who are really mentally diseased, and who steal without having the slightest idea of what they are doing.

"For all these women thieves Dr. Lacassagne invokes the indulgence of the courts. But he is of the opinion that it would be better to prevent than to punish. In the resolution which he presented for the consideration of the congress he said: 'The great stores are veritable provocators of special thefts. They constitute a real danger for feeble or sickly persons. A great many women who would not steal elsewhere here find themselves fascinated and overwhelmed with a desire to appropriate small articles within their reach. It is a temptation that is truly diabolic, for the chances of detection are minimized at certain hours during the day when the stores are crowded, and each clerk has many customers waiting to be served, these meanwhile handling the goods that lie upon the counters.

"The best method of preventing these women from becoming thieves would be, it seems, to station at each counter an officer of the law, not in ordinary dress like the rest of the customers, but in a uniform as conspicuous and noticeable as possible. If a gendarme was placed at each counter there would be no more thefts. Women steal in these places because they believe that they can do so without being detected.

"Dr. Lacassagne also indorsed the rule of some stores that no known kleptomaniacs should be admitted, and suggested that it would be an excellent provision if this rule should be made general, and if minors, unaccompanied, should also be excluded."

He also claimed that:

"The kleptomaniacs steal only in the great stores, in which places the surroundings are all provocative of theft. The articles of merchandise are so arranged as to excite the covetousness of the visitor, for the customer, merchants know well, must be fascinated and her desires excited by the lavish display of rich goods.

"These excitants of the senses might be called the aperitifs of crime, for as absinthe or vermouth stimulates the appetite for food, so do heaped-up counters whet the feminine greed for possession. The strongest willed of women will yield by expending more than she in her sober moments has set aside for her wants. But who can measure the force which draws on and overmasters the feebler or degenerate minds?"

He stated that:

"In London the police and the great stores have a list of people known to be kleptomaniacs—all of whom are people of wealth—about eight or ten hundred in number. When a merchant finds that he has lost something by theft, he ascertains the names of those of his kleptomaniac clients who have visited his place within the previous day or so, and to each of these he sends a circular requesting that they forward to him at once the missing article in question or the price. The kleptomaniac does not remember whether she has stolen or not; she pays at once, therefore, to ease her awakened conscience. It so happens, therefore, that for the same theft as many as ten families will indemnify one of these great stores."

In the discussion that followed Prof. Lacassagne's paper, Motet, the distinguished French alienist, said :

"It is possible for us to draw the line between the kleptomaniac and the shoplifter, if we know the value of the object stolen. The professional thieves scorn all articles save those of some value, but the true kleptomaniac pick up things of trifling cost in comparison. When detected they say with undoubted sincerity, 'It seemed to me as if everything belonged to me—I might have taken all.'

"These thieves are the mentally unbalanced, whose minds are slightly touched by disease. Here the intervention of medicine is legitimate. We have asked many times for a law compelling the appointment of inspectors in the great stores whose business it shall be to deter by their presence all attempts or even thoughts of theft on the part of these kleptomaniacs."

The following resolution was finally adopted by the congress : "The Congress of Criminal Anthropology, considering that theft in the great stores and grand bazaars is a new crime of a particular character, sui generis, resulting from a combination of circumstances artificially constituted, among which may be cited the means employed to tempt the public, the facilities which are given to hold for a length of time in the hands the articles put on sale, and, above all, the absence of an efficacious protection or surveillance, make the following recommendation : That the great magasins and houses of commerce in which the public is permitted to circulate freely, should be the subject of special police regulation, with a view of diminishing the possibility of the commission of these thefts."

ENGLISH PRISONS AND IRISH POLITICAL PRISONERS.

The return of Dr. Gallagher to New York, after his discharge from the prison at Portland, and the release of Gallagher and Whitehead, coupled with the fact that these men were insane when released, has excited public interest and journalistic criticisms on this side the Atlantic.

The New York Journal publishes a statement made by O'Donovan Rossa, illustrated with Photographic drawings made from poses, made by the writer illustrative of his terrible punishments in Chatham, in Milbank and Portland prisons, and that of Pentonville, which relate the most terrible statement of alleged facts, which, if true, show a most lamentable state of affairs in English prisons.

It will probably lead to another parliamentary inquiry. The British people would not for one moment tolerate such a condition of thing as O'Donovan Rossa describes—if they believed his statements.

Head Warden Allison is described by Rosa as a moral monster. He is the warden at Chatham Prison, and if one-tenth part of Rossa's statements are true he well merits the execration of all men.

Will the English people believe the statement of O'Donovan Rossa? If any do so believe, the case of Gallagher will do good as a means of bringing a great evil to the public eye and a needed reform in British prisons.

The New York Herald ably discusses the question, as to how far the prison treatment was the means of inducing insanity in the prisons on those confined.

The solitary confinement, it is claimed, was the cause of the insanity of Dr. Gallagher and of Mr. Whitehead. In discussing the subject the New York Herald says:

"According to all the evidence obtainable Whitehead and Gallagher felt a bitter resentment against their surroundings from the first day of their incarceration. Instead of this resentment wearing away with time, it increased and was fostered by perpetual silence and restraint. No restraint, however, could prevent their looking about them at the beetle brows, shock heads and evil faces of their companions.

SOLITUDE WAS TOO MUCH.

"First came grief, then resentment, then aberration. The eternal silence and the strange association with habitual criminals were too much for them. They began to act strangely. The keepers, knowing that the two men were shrewd and to a certain extent refined, imagined that they were shamming. They were warned, but the warning had no effect.

" 'A few days' solitary confinement on bread and water will bring them around,' was the argument of the physicians. Then came what might have been expected in any other prison under similar circumstances. The two men were put into solitary cells away from the sight or sound of any of their kind, on a bread and water diet, which was shoved through a small barred grating without a word. On Sundays they were conducted separately and by dark and solitary corridors to the chapel, where they sat in deep stone pews in such a position that they could see nobody but the black clad and sepulchral priest throned high above them. Then back again to the solitude, silence and gloom of the small stone cell.

"How much of this sort of thing can the human mind endure without giving way? A mentally dull man might stand such a confinement indefinitely. He would bear it just as a tiger bears solitary captivity, banqueting silently on whatever might come through the grating, sullen and lonely, crouching like a wild animal in its cave.

"To men of the stamp of Whitehead and Gallagher, however, such a punishment meant ultimate idiocy, pure and simple. When the mind feeds upon itself, with no extraneous relief of sights and sounds, it is only a matter of time before it snaps.

"So it was with the two dynamiters. Days of solitude, weeks of silence, months of gloom, in an endless round, with no sound but their own heartbeats, and the dull echoless thump or their own footsteps, pacing up and down and crossing over and over again in a ceaseless endeavor to get away from themselves, rapidly wore away their mental balance.

"To stop, to be idle for a moment, was to face the horror of a living tomb. To pause for an instant was to calculate; twice two are four seconds, twice four are eight, twice thirty seconds are a minute, sixty minutes an hour, and so on to days and nights and weeks and months and years.

MINDS RAN DOWN.

"No wonder the tortured brain, turning in this restricted circle, wore itself out and ran down like an eight day clock. No wonder that in the unutterable silence, full of death bells and the low ticking of the grave watch in the walls, the minds of the prisoners were focussed so small and so far that they could hear the wheeling of the stars and the slow great march of the suns through space.

"At first it was aberration; then by slow erosion of years it became dementia, insanity, idiocy. With two men so constituted the halter or the guillotine would have been more humane.

"According to a majority of criminologists solitary confinement is all right as a punishment for refractory prisoners. It brings them around to tractability, where any amount of beating or stringing up by the thumbs, or any form of physical torture will fail. They will seldom hold out for more than forty-eight hours.

"But from all that can be learned neither Whitehead nor Gallagher was refractory. Their aberration was taken for simulated insanity, and in the effort to cure them their dementia was increased to the stage of incurability."

In the more detailed discussion of Solitary Confinement, as a punishment for crime, the Herald very justly states, that :

Solitary confinement in this country, except as a means of punishment for obstinate and unruly prisoners, is practically unknown. As a punishment for crime it is looked upon as murderous both to mind and body. At the same time there is no law against it in any of the great prisons of this country.

Probably no man in the country knows more about criminals and their treatment than Warden Cassidy, of the Eastern Penitentiary, at Philadelphia. Mr. Cassidy is the dean of all wardens. He has held his present position for almost thirty-five years, although the election for warden takes place every six months.

Warden Cassidy favors solitary confinement for refractory prisoners but not as a means of punishment for crime. He also favors the separation, or "individual treatment," of prisoners. That is to say, he believes in surrounding them with influences and companionship calculated to make better men of them. At the same time, he is quick to resent any infraction of prison rules by a siege of solitary confinement.

"Solitary confinement may have driven Gallagher and Whitehead insane," he said to me last week. "It will drive some men crazy ; others it won't. Some prisoners will stand almost anything without flinching.

"The convicts in the Pentonville Prison, which is the model prison of England, all have sentences ranging for different periods. The first nine months of this is solitary confinement, and it is solitary, too.

"It is a well known fact, as I have frequently stated, that in past years one of the objections made to the cellular system, as it was then called, was that it was likely to impair the minds of the persons under its treatment. Under proper treatment this cannot be.

"The theory has been abandoned long since for want of facts. There are insane people in all prisons, and more in proportion than in the same number of the community at large, for many of the crimes committed are such that insane persons would conceive.

"Many of the reports of prisons this year refer to the care of insane criminals and the proper disposition of them so earnestly, that insane prisoners are found in many of the congregate prisons. Some advocate their removal to insane hospitals when the disease is positively developed ; others advocate the construction of separate prisons for insane criminals. New York has such an institution. A separate prison for insane prisoners would be the proper disposition of that class, but they should not be sent there until their term of sentence had expired ; or sent there direct from the court upon conviction. As soon as it is known in a prison that the insane can be removed before the expiration of sentence, there will be much simulating in order to get to a hospital, as escape would be considered easier than from the prison proper. Simulated insanity is more troublesome to the officers of the prison than real insanity.

SEPARATION OF CLASSES.

"Separation of the classes that make up the prison population is the common sense of the subject. There is a class in all prisons in considerable numbers that it would be proper to provide a separate prison for—persons who are convicted of crimes against persons where property was in no way connected with the offence. They are not criminals, nor are they likely to be after the expiration of the term of which they were sentenced. They are generally the best conducted prisoners in any prison. Many of them convicted of the crime for which they were sentenced were innocent of any intent to commit crime before or at the time of its commission, and frequently had no knowledge of it for some time after. Most of this class are industrious. Honest and truthful, generally respected by the community in which they lived, they do not require the treatment necessary for the habitual criminal. A separate prison for this class is as much needed as for the criminal insane.

"Of course we have many cases of insanity here in prison, but there is no ground for the charge that the separate system produces insanity. No one is removed from the prison because he is insane.

"Of those who are now insane in this prison five have developed insanity since their admission, and the others were tainted before they came."

LABOR NO PUNISHMENT.

Warden Cassidy intimated that lack of work was perhaps the initial cause of the mental trouble of Whitehead and Gallagher. Here are some of his views on the subject :—"It is essential that the people confined in prisons should have work. There is very little disposition on the part of convicts to avoid work. In the prison I am engaged in the greatest punishment is to deprive a man of the opportunity to labor. An idle man will tire of his idleness sooner than the warden, and he will ask for work—any kind [that you choose to give him. They are, of course, exceptions to all rules. There are men who will not work at all unless they are compelled, and the old rate of wage labor is the only remedy for that class outside of prison. Bread does not grow on trees ; it has to be earned by some one, and if an idler gets bread to the production of which he has not contributed he has infringed on somebody's rights. In prison he should get just that amount of bread he has worked for, and that is all a man gets who has to work for a living outside. Labor is no punishment ; it cannot be classed in any way as punishment. A man with a large family to take care of goes to work day in and day out, and as soon as he is out of work in one place he goes to another. People do not go around looking for punishment.

It is not however wise to pass judgment against Head Warden Allison *ex parte*—or indeed on the British Prison System, hastily. We shall be glad to hear the other side.

THE MEDICAL AGNOSTIC

Is much like the other agnostic. His merit, his religion and his logic is based on what *he don't know*.

The limitations of human knowledge are the corner stones of what he calls his faith; but he is without faith, and does not comprehend either its meaning or significance.

Prof. H. G. Wetherill, in an admirable article, in the Western Medical Review, in describing the medical agnostic and the mischief he does in attempting operations which he does not understand and is not equipped or competent for, says :

"This agnostic is a very dangerous man, not because he is densely ignorant, but because he is relatively so and is utterly unaware of his limitations, though ever ready to point out those of other people."

Operations for appendicitis and for women's diseases excite him most just now, and he is engaged in telling the world what he doesn't know about these conditions and their cure. This would do little harm if it stopped here, but unfortunately he is the trusted adviser of some good people, whom his self-reliant, magnetic personality has hypnotized to the point of idolatry, so that they "prefer him drunk to another man sober" and will agree to nothing he does not suggest or endorse.

Someone has well said that "The tragedy of to-day is not the tragedy of the criminal, but of the incompetent. It is the tragedy of the man who has the best intentions and the best character and a fair equipment for his work, but who has not a thorough equipment and cannot do the thing he starts to do in the best possible way. Society is crowded with half-equipped workers, with men and women who are honest and earnest, and not incapable, but who are not up to the level of the very best work."

Such people become agnostics, and because they cannot appreciate or understand the things which are beyond and above them, decline to believe them possible for others.

"Our doubts are traitors,
And make us lose the good we oft might win,
By fearing to attempt." —*Measure for Measure*.



PROMINENT MEMBERS OF THE MEDICO-LEGAL SOCIETY.

SIR BENJ. WARD RICHARDSON,
of London.

COL. JOHN R. FELLOWS,
of New York.

SURGEON ELISHA GRISWOLD, M. D.,
of Sharon, Pa.

J. W. C. O'NEIL, M. D.,
of Gettysburg, Pa.

EX-CHIEF SURGEON
GEORGE GOODFELLOW, M. D., of Cal.

JUDGE CHAS. L. HOLTEIN,
of Indianapolis, Ind.

THE CHARGE OF MR. JUSTICE STEPHEN IN THE MAYBRICK CASE REVIEWED AND CRITICISED.

Under the law of England, errors of law in the charge of a trial judge are substantially remediless so far as a review on appeal is concerned.

The report of the Woman's Committee of the Psychological Section, which asserted such a violation in the charge of Sir James Stephen in the Maybrick case, did not enumerate the particular points to which their general indictment related.

The discussion of that report before the Medico-Legal Society, was general and did not particularize, and it is perhaps proper, to specify some of the more glaring examples of what may be properly claimed to be fair subjects of criticism in that charge; as they might have been urged, as reasons for a new trial, were the case one before an American court of review, or if such an application was made in a civil case on appeal or a motion for a new trial in an appellate court in England.

Without going into an elaborate review of the entire charge, let us examine a few of the most glaring instances that have appeared on an examination of portions of that charge—and I give

EXTRACTS FROM CHARGE WITH COMMENTS BY WAY OF OB- JECTION.

CHARGE I. "It seems to me, though it is very difficult to put the matter fairly, that the real crucial question seems to be, how did the poison found in that man's liver and other organs get there? Did it get there in such a degree and in such a way as to show that the cause of death was arsenical poisoning or did it get there in a way that could otherwise be accounted for? When you have gone through the whole of the case and when I have called your attention to every part of it, you will find that this is the main question for your decision. The answer to that question will really and substantially settle the case whether you think one way or the other. If you can show a sufficient quantity to cause death, why you need not go further. It seems to me too plain for argument if you can show that you really get a deadly dose of poison in that

man. I am so much brought to that opinion that I am disposed to miss a good deal out of the evidence, because it comes to that, look at it how you please. * * Who put it there? Well so far as one could see, it could not come there of itself. So who put it there? Now there are several ways of answering this question which do not involve guilt on the part of any one. You must consider the degree of probability which may be attached to each of these different ways. The first which was suggested is that Mr. Maybrick put it there himself—namely, that he, owing to grounds which must be carefully considered, had been in the habit of eating arsenic. Gentlemen, the first way which is suggested, is that Mr. Maybrick put, on grounds known only to himself, arsenic into his food, owing to this dreadful habit he had acquired of taking arsenic. Another way, and the only way in which the arsenic could not have been administered criminally was the improper taking of it as medicine. The only other way which is suggested that I know of in which the arsenic could have been put into him is by crime. It might have been put in by himself through an unwise and injudicious act of self-indulgence, or it may have been put in by somebody else by crime. When you come to consider the matter carefully you will find that in one way or the other of these two ways the matter must have got into his body.

* * The arsenic may have been taken by unwise and injudicious habits of self-indulgence—that is one thing. It may have been by the taking of medicines improperly or by some means of the kind. If it was taken in this way the presence of arsenic may be reasonably accounted for. If, however, you think there is a possibility of doubt you ought to acquit the prisoner. If, however, it did not come into his body in either of these ways I can hardly see how it has been administered except by crime and it has not been suggested that any one could well be the criminal except the prisoner in the dock.”

OBJECTION 1. It being plainly possible that the arsenic might have been administered by crime and yet not have caused death (as the Home Secretary with the assent of the Judge afterwards admitted) the Judge ought to have told the jury that even if they were satisfied that the arsenic in the body had been introduced by crime they must further be satisfied beyond all reasonable doubt that it had caused the death before convicting the prisoner of murder, which was the only charge against her.

2. He should also have told them that it was not for the prisoner to show that some other person had criminally administered arsenic to the deceased, and that the evidence against her being of a purely circumstantial character they should carefully consider whether on the assumption of a criminal administration of arsenic, it had been established beyond all reasonable doubt that she was the criminal.

[It will probably be alleged that the prisoner has got the benefit of the first of these objections through the Home Secretary's decision of sparing her life. But a doubt as to whether the criminal administration of arsenic caused death would have entitled her to an acquittal on the charge of murder, and if afterwards tried for a criminal administration of arsenic she would have had 1. The chance of an acquittal. 2. The chance of the jury finding that it was given not with intent to murder, but with intent to injure, aggrieve or annoy, in which case the maximum sentence would have already expired. 3. The chance (amounting to a strong probability) that if convicted of attempt to murder the presiding judge would not have passed the maximum sentence of penal servitude for life.]

CHARGE 2. "You must decide whether of the two (Dr. Stevenson and Dr. Tidy) is correct."

OBJECTION. He should have told the jury that if they were in doubt which was correct they should acquit the prisoner, and that there was no necessity for their arriving at a positive conclusion on the subject.

CHARGE 3. "But from the 28th of April—from the beginning of his illness—we know everything that was administered. Everything was under the most careful and watchful regimen of medical men and nurses and he could hardly have taken anything to cause these painful symptoms."

OBJECTION. He could have dosed himself with anything he pleased up to the 4th of May, the first day that he spent in bed, and it was proved that on the 3rd day of May (the day on which he got a decided change for the worse) he forgot to take with him to his office the lunch which his wife had prepared for him in accordance with Dr. Humphreys' directions, and we therefore know that if he took any lunch on that day it was *not* what had been prescribed by the doctor.

CHARGE 4. A see also B. "You must not consider the case as a mere medical case in which you are to decide whether the man did or did not die of arsenic according to the medical evidence. You are not to consider it as a mere chemical case in which you are to decide whether the man died from arsenic which was discovered as the result of a chemical analysis. You must decide it as a great and highly important case involving in itself a most highly important moral question; and by that term moral question I do not mean questions of what is right or wrong in a moral point of view, but questions into which human nature enters and on which you must rely on your knowledge of human nature in determining the resolution you arrive at."

OBJECTION. He should have told the jury that, in determining whether the man died of arsenic or not they were to be

guided by the medical and chemical evidence only, and that unless it was proved beyond reasonable doubt that the man died of arsenic, the prisoner's motives and her moral character were wholly irrelevant to the issue.

CHARGE 5. The judge told the jury the result of certain experiments made on a dog and proved on another trial for poisoning and proceeded: "that is the kind of thing to be taken into consideration when you come to consider the small quantity" of arsenic found in the body, &c.

OBJECTION. The evidence in question was not given in this case but on the trial of Dr. Smethurst 30 years before, and ought not to have been introduced. Its import was moreover misstated by the judge and if correctly stated would have rather favored the prisoner.

CHARGE 6. Immediately after mentioning the purchase of fly-papers by Mrs. Maybrick, "it has been shown that arsenic was found in this medicine and you have Mr. Maybrick saying he was very sick and in great pain after taking it."

OBJECTION. There was no proof that he had taken the medicine in which arsenic was detected on this morning, and there was proof (in the evidence of May Cadwallader to which the judge did not refer) that he ascribed this illness to a different medicine on that occasion, of which latter medicine he said he had taken an overdose. In another passage of the charge he ascribed this statement to the witness Alice Yapp, but erroneously.

CHARGE 7. "It was pointed out then that what kills in regard to arsenic was the part which was in process of going through the body not that which remained in the body."

OBJECTION. This is not in the medical evidence.

CHARGE B. See also A before. See 4. "There are three or four circumstances in this case which are circumstances of very grave suspicion and where you find a case in which this dreadful accusation is made and is accompanied with circumstances which apart from the physical, chemical and medical aspects of the case are of such a character as are likely to produce suspicion you must consider how far they corroborate the other evidence that has been given," (and he goes on to make a very unfair comparison).

OBJECTION See A. These suspicious circumstances are only of use as a clue to the criminal after death by poisoning has been proved, and unless they are so conclusive as to exclude poisoning by any one else, they do not diminish but increase

the doubt of the prisoner's guilt arising on the medical and chemical evidence. The judge throughout failed to point out the two distinct issues: 1. Did the man die of arsenic? 2. *If so*, was it feloniously administered by the prisoner?

CHARGE 8. See 2. "We have to consider this not in an unfeeling spirit—far from it—but in the spirit of people resolving to solve by intellectual means an intellectual problem of great difficulty. * * * The question for you is by what was the illness caused—by arsenic or some other means."

OBJECTION. He should have told them that it was not necessary for them to solve the intellectual problem or to find positively the cause of death, but to consider whether there was a reasonable doubt on either subject, and if so to acquit the prisoner; and that the very difficulty of solving the intellectual problem implied that the case was not free from doubt.

CHARGE 9. "These two letters certainly do show in the most unmistakable terms what was the position of this woman as regards wicked falsehoods." (The judge was discrediting the statement which she made in court).

OBJECTION. Finding letters in the possession of the prisoner in which the writer accused her of falsehood, is no evidence of actual falsehood, and no evidence was given to show that she had actually deceived them. Moreover the expression "a staggerer" in the letter to Brierley which the judge relied on as a charge of falsehood, evidently meant a startling or alarming statement, not a false one.

CHARGE 10. (As to Mrs. Maybrick's letter to Brierley), "It is all a question how long his strength will hold out and that he will soon die."

OBJECTION. These are not the words of the letter, nor, it is submitted, is it a fair and reasonable construction of it.

In several passages the effect of adultery in destroying all moral principles seems to be much exaggerated.

There are many minor mistakes on matters of fact and many incidents are involved in inextricable confusion by the judge's mode of dealing with them. He is not even consistent. For example, take the following two statements which were both used against the prisoner in different connections and in different parts of the charge.

"I asked a question to ascertain the relations between Dr.

Hopper and these Maybricks. He said he was just the family doctor." * * * * "Do you think a quarrel of that sort can be made up by the family doctor who is not very intimate with them—that his saying 'Oh, you had better make it up and be friends' would settle it?"

"It is one of the singularities of the case if you consider the past relations between Dr. Hopper and the Maybricks. They seem to have consulted him and to have been most intimate friends on terms of the strictest confidence." (This refers to a refusal of Mrs. Maybrick to call him to consult with Dr. Humphreys when suggested by Alice Yapp).

HERE ARE TWO MINOR ERRORS OR FAULTS.

CHARGE II. "He had a small taste out of it (the meat-juice) before it was poisoned."

OBJECTION. He should not have assumed that Mrs. Maybrick introduced the poison into the meat-juice (as he did also in other passages of the charge) but have laid the evidence on the subject in detail before the jury and left them to decide whether the proof that she had put it in was conclusive—which it is submitted it was not.

CHARGE 12. "Two grains of it (arsenic) given in five successive days would have killed him." (The judge is stating Dr. Carter's evidence).

OBJECTION. Dr. Carter gave this as the smallest fatal dose on record and did not say that it would have killed Mr. Maybrick.

OBJECTION 13. A. Dr. Thomas Stevenson had been questioned upon the subject of the very small amount of arsenic found in the remains, based on a comparison of the part analyzed by him, and his answers upon so very important a part of the Scientific evidence were careful, fair and guarded substantially, "that it was possible, that a possibly approximate deadly dose existed in the whole body."

It was not denied that and was conceded that some arsenic would be eliminated during life, but even the probable ratio could not be stated, or estimated, and it was also conceded to be a matter of scientific record that that arsenic taken in life

had remained in the body months after the taking and even nine months after.

Upon this crucial, vital and most important point, the judge in his charge, introduced upon his own authority, the alleged experiment in a dog, poisoned by a dose of arsenic, administered for that purpose, when post mortem, no arsenic was found! There was no evidence of the truth of the facts claimed, in the case of the dog, and no one can tell what the influence of that portion of his charge may have had on the mind of that jury.

It was clearly illegal and would alone in my opinion, secure a new trial in England, had it occurred in a civil action, when a verdict for money had been found by the jury.

OBJECTION 14. Mr. Justice Stephen knew that by the law of England, a trial judge had no right to allow a jury to know from his language, conduct or manner, what his personal and individual opinion as to the guilt or innocence of the accused was. In his address to the Grand Jury, he having this rule in mind, stated to them his determination to give no hint of his opinion. Still, in his charge, on the second day, by both his language, his conduct and his manner, he left not a man upon the jury in the slightest doubt that he believed that the accused was guilty. He changed his whole manner on the second day, his voice was loud and emphatic, and all the prejudicial points were pressed, reiterated, some of them several times.

OBJECTION 15. His charge on the first day was moderate, calm, judicial and fair, so low and moderate in tone, as to be at times, in some parts of the court room, almost inaudible.

It was eminently fair to the prisoner and was entirely impartial. He dwelt upon the fact that the jury was under British Constitution the arbiter of the case, and disclaimed any intention to express any opinion of his own.

Sir Charles Russell had adopted the following order of questions to the jury :

1. Did the deceased die of arsenical poisoning ?
2. Who administered it?—and had claimed that if there was

equal authority on this point, in conflict that that issue was a fairly a doubtful one, and the charge on the first day substantially adopted and approved of Sir Charles' position—but on the second day, with an entire change of voice, manner and conduct, he changed the whole tone of the charge, and he insisted in loud and stentorian tones to the jury, that the two issues above named were inseparable.

OBJECTION 16. He strongly commented on the fact that the accused had not brought as witnesses her school acquaintances from Germany, nor her mother, upon the question of the fly-papers and the use of arsenic as a cosmetic.

This would be a fatal error in any appellate court in the United States or on the continent of Europe.

If it had been well taken was the omission her fault or that of her counsel.

The foregoing are a few of the many points which appear objectionable in the charge. It is very lengthy, and many more objections could be raised, but lack of space prevents their recital here.

A careful review of the charge will show any unblased mind that the general indictment formulated by the Committee of Women, of the Psychological Section, was well made and abundantly sustained. The publication of the full charge, we are glad to know, will shortly be made in London, so that it may be accessible to all.

COMMITMENT OF THE INSANE.

The recent changes in the Law of Commitments of the Insane in the State of New York, the outcome of a long agitation and a disturbed state of the public mind, has been an important factor in medical thought among alienists and especially among Asylum Superintendents and Examiners in Lunacy.

The Presidential address of Dr. Richard Dewey before the American Medico-Psychological Association, last May, gives much space to an analysis of this topic, and a careful resume of all evidence tending to controvert illegal Commitments of the Insane, and the evidence of Dr. Carlos MacDonald, Dr. Wines, of Ill.; Mr. Frank Sanborn of Mass.; Mr. Albert Bach and Dr. Ralph L. Parsons, of N. Y.; Dr. Robert H. Chase, of Pa., and others are cited to show the rarity of improper Commitments of the Insane. So far as they could at all reflect upon Superintendents of Asylums, Dr. Dewey concludes a most interesting resume with a statement of the proper legal safe-guards, which he claims to have been established by experience, as follows :

“First. A medical certificate by two physicians, competent under provisions prescribed by law.

Second. The approval of the medical certificate by a judge of a court of record and his examination or hearing of the patient unless he deems it necessary and so states.

Third. Notice through the alleged insane person of the intended proceedings if considered necessary by the court.

Fourth. A jury trial, if called for by the patient or some responsible person, or deems it necessary by the court.

Fifth. The filing with a State Board of Lunacy or Charity of copies of the papers in each case within a brief period of the arrival of the patient.

Sixth. Under certain restrictions patients may be allowed voluntarily to enter the asylum.”

It is worthy of notice that these points are what is now secured under the provisions of the new law of New York, and although many of these changes were sharply contested by some of the State Board and perhaps occasionally by Superin-

tendents, if Dr. Dewey is right, the reforms in the New York law will be best demonstrated by a trial under it.

As to improper commitments, it is regarded as remarkable by the courts and the legal profession, that Superintendents of Asylums should regard an inquiry by Habeas Corpus or otherwise as a reflection upon them and that they should feel called upon to oppose and resist it.

With a long and large experience in cases of this kind I have now no recollection of ever having heard any Superintendent of an asylum criticised, even as being in any way connected with an illegal commitment.

They cannot be in the nature of things. They never are. The public does not so think, believe or charge. Commitments are made by interested parties, usually hitherto, on the motion of physicians employed to do it.

No man of any profession under our constitution and laws should have the power, except a judge of a court of competent jurisdiction, to commit a citizen to an insane asylum.

No combination of circumstances would ever either justify it or render it necessary. The new law and Dr. Dewey's basis, puts an end to that.

No class of men in our community are entitled to higher consideration than Superintendents of asylums.

As a class they have well deserved the confidence the public has always reposed in them. They never commit. They only receive—and there is no reason why a Superintendent of an asylum when he discerns that a mistake has been made in a commitment, should not rectify it.

In my experience they have usually done so and cheerfully.

Under the new law much of this odium which has rankled in the public mind will be entirely removed, not only from the Superintendent of asylums, but also from the medical men who sign the certificates. It is now a judicial proceeding and should be conducted as such.

COMPULSORY VACCINATION. SHOULD IT BE ENFORCED BY LAW?

This subject introduced before the Medico-Legal Society, in the City of New York, by a paper presented by Dr. Montague R. Levenson, upon the subject in which his position is mainly an assault upon vaccination itself.

Most Layman and the majority of the Medical Profession have been educated to accept vaccination as a reliable, safe and the only preventative remedy, to insure against small pox and without especial examination, the world has accepted the remedy discovered by Jenner, whose centennial has just been celebrated by all the world even in Japan.

It was not considered quite the proper way to meet the issue in a controversy *pro and con* as to the merits of vaccination for this reason, and the issue was broadened and widened so as to embrace this issue.

"Conceding the utility and efficacy of vaccination as a preventative against small pox should it be made compulsory?"

Owing to the recent agitation in England as to compulsory vaccination and the recent adverse report of the Royal Commission, and to the fact that it was alleged to be in contemplation to engraft the idea of compulsory vaccination into the new charter now being formed for "Greater New York." I decided to take the views of some of those best calculated to know the facts germane, to such a discussion, and being quite ignorant myself of how the lymph now in general use was obtained and what supervision or precautions were observed, as to its genuineness and purity, I addressed the following letter to Boards of Health in all the neighboring States and Cities and to men eminent in the profession as to the issues and especially as to the subject of compulsory vaccination per se:—

Medico-Legal Society, Secretary's Office, No. 39 Broadway,
New York, Nov. 14th, 1896.

My Dear Sir:—I have the honor to enclose a notice of our next meeting, and dinner to be held on the 18th of November, instant, and would be glad to see you present and to take part in the discussion of the 4th question on the programme.

4. Conceding the utility and efficacy of Vaccination as a preventive against Small Pox should it be made compulsory?

May I also ask you to advise me in time for use on that occasion if possible, if not as soon as you can upon the following additional subjects:

1. What lymph do you use in vaccination and how obtained?
2. Is that lymph obtained by inoculating the calf with the virus of small-pox or from any lymph thus originally obtained.
3. With precisely what lymph is the calf vaccinated and how was that lymph originally obtained for use upon the calf?
4. What supervision is exercised by the Board of Health or any public official over the character, quality and manufacture of the lymph employed in vaccinating the calf as to its efficiency and genuineness.
5. What security have you that the lymph you use or that they employ on the calf, is pure?

An early reply will be esteemed a favor.

CLARK BELL.

I submit some of the replies I have received to that discussion.

George B. Fowler, M. D., Health Commissioner of New York City, replied to the question as follows in a letter to the Secretary :
Clark Bell, Esq., 39 Broadway, New York City:

My Dear Sir:—Your communication of the 30th, relative to my replying to a prospective paper before the Medico-Legal Society, by Dr. M. R. Levenson, in which he assails "compulsory vaccination," is at hand. This Board is not in favor of "compulsory vaccination," and never has been. It is acting under the State laws when it assists the Board of Education in securing the vaccination of pupils and teachers. So thoroughly has this co-operation been carried out that in the last ten years, during which three epidemics of small-pox have occurred in this city, not a single pupil or teacher connected with the public schools has been reported to this Department as suffering with small pox. The reason the Board of Health does not believe in compulsory vaccination is because it is believed that such a statute would result in antagonism to the work, which would defeat the object it has always secured in the way of gratuitous and voluntary vaccination, and the comparative immunity from small-pox for which this city is noted.

I therefore do not see any reason why I should defend the position that Dr. Levenson proposes to take in this paper.

Yours very truly,

GEO. B. FOWLER, Commissioner.

Dr. Moreau Morris, M. D., Health Department N. Y. City, replied as follows:

Clark Bell, Esq., Secretary of the Medico Legal Society:

Dear Sir:—To the question, "Compulsory Vaccination, should it be enforced by the law?" I would respectfully answer, that for a general State Law, negatively, but for local purposes in cities or villages having a population of 1000 or over, where large congregations of school children especially congregate, there should be compulsory vaccination as a precedent to school admission.

The experience of other countries and in this city in suppressing the spread of small-pox, by carefully selected vaccine virus introduced into the human system by proper antiseptic means, seems to set the seal of its legitimacy, for public policy and universal protection beyond all question. The public protection is paramount to any and all private interests. Respectfully yours,

MOREAU MORRIS, M. D., 109 East 73rd street, N. Y.

Prof. Eugene Foster, Dean of the Faculty of the College of Georgia, replied as follows:

Mr. Clark Bell, N. Y. Medico Legal Society, No. 39 Broadway, N. Y.

My Dear Sir:—Pray pardon my failure to earlier make reply to your letters of Sept. 28th and Oct. 1st, great press of business together with several absences from the city has prevented earlier attention to the matter. I very sincerely appreciate the compliment extended in asking me to submit a paper on Vaccination to be read on the 3rd Wednesday of November in reply to one to be presented by Dr. Montague R. Levenson. I could not do justice to the subject of Vaccination in "a short paper." I have written exhaustively upon this subject in my article on "The Statistic Evidences of the Value of Vaccination" which was presented at the Jenner Centennial at the recent meeting of the American Medical Association in Atlanta. This paper you will find in a series of articles which were published in the Journal of the American Medical Association. If this paper does not produce sufficient evidence to satisfy a reasoning man as to the safety and efficiency of vaccination I could not consent to

waste time in arguing the question with him. In my positions on the question of vaccination, I am sustained by almost every reputable medical man in the civilized world. I do not attempt to argue the good policy of compulsory vaccination; this is a question entirely separate and distinct from its efficiency and safety, and many of the best members of the medical profession seriously doubt if indeed they are not actually opposed to compulsory vaccination. I have had the article above referred to reprinted and will in a short time, send you a copy of it if you desire me to do so.

I very greatly regret that I did not know that the copy of the Berlin Report of the Consul General referred to by you was not preserved by me, that is, the original received from Surgeon General Sternberg, was included among the manuscript turned over to the printer with the balance of my article read at the Jenner Centennial.

I will be very glad to have you send me Dr. Levenson's article as promised in yours of October 1st, for the reason that I do not now receive the transactions of the Medico-Legal Society as I formerly did. I am

Very truly yours,

EUGENE FOSTER.

Col. W. P. Prentice, counsel for the health authority, replied as follows:

Clark Bell, Esq.:

Dear Sir:—I have the honor to acknowledge your letter of the 2nd inst., with its invitation "to prepare," for the meeting of the Medico-Legal Society, on November 18th, my "views upon the following theme, "Conceding the utility and value of vaccination as a preventative, should it be made compulsory by law."

There cannot now be said to be any open question subject to concession in the first clause of your theme, in my opinion; but as the Register of Scotland reported in 1874, "there is but little of that unreasonable opposition to the practice of vaccination" remaining, and the recent report of the Parliamentary Commission of England, of which Lord Herschell was the chairman, following similar reports in Germany and other States, closes the discussion for the present, exhibiting the impracticability of opposition. This result adds strength to the argument for the indirect methods of securing vaccination. I have elsewhere in my book on "Police Powers," discussed this question more at large, and have given reference, to many cases, including those which have maintained personal liberty where the public health was not directly endangered. At page 132 this statement was made, "Compulsory vaccination has been instituted in several countries, and by the laws in several States in respect to minors. City ordinances regulate it, but the indirect method of excluding children not vaccinated from schools and factories, or in case of immigrants, insisting upon quarantine, and the offer of free vaccination, with the constant supervision of the health officers, are more effective."

This opinion I still maintain, and in common with many others, have not ceased to regret the unwise proceedings, which have been occasionally undertaken, in defense of health and sanitary laws, weakening their proper force. The Court of Appeals' decision in 1895, *Matter of Smith*, (146 N. Y., 68,) brings up the sound rule to govern such cases, viz.: that, "where a right to restrain the citizen in his personal liberty, or to interfere with his pursuit of a lawful avocation is claimed, to sustain the claim it must appear very clearly, not only that the right has been conferred by law, but that the facts exist justifying its exercise. The validity of the law is not so much called into question, as the right to enforce its provisions," the opinion says, and again uses words which I would adopt. "I

think no one will dispute the right of the Legislature, to enact such measures, as will protect all persons, from the impending calamity of a pestilence, and to vest in local authorities, such comprehensive powers, as will enable them to act competently and effectively." Little can be added to the lesson of this judgment, and I believe, we have at present sufficient laws, if they are duly administered, and properly enforced.

I remain with great respect,

Yours truly,

W. P. PRENTICE.

Sir Frederick Bateman, of Norwich, England writes:

Upper and Giles Street, Norwich, Nov. 4, 1896.

Clark Bell, Esq.:

My Dear Sir:—You ask my views on compulsory vaccination. It so happens that this question has much engaged my attention and I send you a pamphlet, which at page 5 you will see my mature views on this subject. With kind regards,

Yours faithfully,

FREDERICK BATEMAN.

The pamphlet referred to is the annual report of the Asylum Union for 1895, by Sir Frededick Bateman, which cannot, for want of space, be given in full, but the summary will be of great interest, which is as follows:

I hold that any individual who from his obstinacy declines to avail himself of the protective influence of vaccination, and thus risks not only his own life, but that of his innocent neighbor, is just as much liable, or ought to be, to punishment by law, as he who knocks his neighbor down, or picks his pocket; and I maintain it is a wicked crime, for persons in the broad daylight of the nineteenth century, from obstinacy or ignorance, to abstain from being vaccinated and from having their families similarly protected.

As hypothesises and mere opinion have but little influence, I wish to support these remarks by some documentary evidence in reference to the results or vaccination. During a period of 16 years, 5797 cases of Small Pox were admitted into the Small Pox Hospital, at Highgate. Of this number, 2654 or nearly one-half were unprotected by vaccination; of these, 996 died, being 35½ per cent. Now just mark the reverse; of those properly vaccinated—and I lay great stress on the word "properly," because otherwise these statistics might be pulled to pieces—just under one per cent. died; so here you have 35½ per cent. dying, of the unvaccinated, and less than one per cent. of the vaccinated.

The latest scientific views as to the value of vaccination may thus be summarised.

1st. Vaccination properly performed in infancy, affords an almost complete protection against Small Pox up to the period of puberty; but it is important to bear in mind that vaccination is a surgical operation, and should be performed in a satisfactory and careful manner; for many of the supposed failures are in reality due to the careless way in which the operation has been undertaken.

2nd. That in the few instances in which vaccination may fail to impart absolute protection against the Small Pox, it nevertheless, in the majority of instances, modifies the course of the disease, and renders it less fatal, as was strikingly exemplified in the outbreak at Hackford.

3rd. That at puberty, re-vaccination is strongly to be recommended, and that, as a rule, such re-vaccinated persons may be regarded as permanently protected, although in an epidemic of Small Pox, it

may be a wise precautionary measure to submit them again to the process of vaccination.

The importance of the subject, and the fact of the recent outbreak of Small Pox, in this Union, must be my excuse for dwelling at such length on the efficacy of vaccination. The arguments for the necessity of it have been much strengthened by the remarkable discoveries recently made in connection with bacteriology and the anti-toxin treatment of disease, discoveries which have been hailed with acclamation in all parts of the civilized world; and I unhesitatingly and emphatically assert that Sanitary Authorities will be neglecting their duty, in the face of all this, if they do not resolutely and unflinchingly put into operation the compulsory clauses of the Vaccination Acts.

C. S. Lindsley, M. D., Secretary of the State Board of Health, of Connecticut, replied as follows:

Clark Bell, Esq.:

Dear Sir:—In your courteous invitation to me, on September 1st., to prepare a paper "In support of Vaccination," there is not a word about "compulsory." In your favor of September 10th, you speak of my proposed paper, "defending compulsory vaccination." Defending Vaccination and defending compulsory Vaccination are two quite different things. I am not an advocate of compulsory Vaccination. I am positively opposed to it. But wholly on the ground of expediency. The people of this country are too thoroughly imbued with a sense of personal independence, to submit patiently to personal compulsion. The attempt would excite hostility to vaccination that does not exist at present, and would hinder rather than promote the cause of Vaccination.

I have received this morning another notice with an invitation, which I regret to say I shall not be able to accept, by reason of other engagements.

Lack of time obliges me to reply briefly to your numerous questions although they cover enough for a small volume. I will answer them as you have numbered them.

Q. (1). Ans. Sometimes humanized and sometimes bovine virus.

Q. (2). Ans. No.

Q. (3). Ans. From a previously vaccinated calf, and originally from a cow or heifer with Vaccine disease.

Q. (4). Ans. In most states there is no legalized supervision.

Q. (5). Ans. My only security is the known care and precaution, which are observed by the best producers. Except when I use humanized lymph and then my own personal knowledge of the health of the subject, from which it is taken.

Very Respectfully,

C. A. LINDSLEY.

Dr. Saml. W. Abbott, Secy. Mass. State Board of Health, replies:

Clark Bell, Esq., 39 Broadway, New York, N. Y.

Dear Sir:—In reply to your kind invitation to be present next Wednesday, I should like very much to be there but it is impossible. In reply to your questions:

(1.) I invariably use vaccine lymph from the calf. There is no objection, however, to the use of human lymph provided you know that it comes from a healthy source.

(2.) The original source of the disease in the cow is undoubtedly some exposure to small-pox infection. Experiment has definitely settled this point. The term "spontaneous cow-pox" has often been used in this country and abroad in connection with this subject. No progressive physician, however, at the present day, would for a moment admit the use of such a term. Infectious diseases have an

origin, and that origin is an infectious disease of the same kind. As a matter of fact the term is simply used as a catch-penny dodge for lining the pockets of some particular producer of vaccine lymph. I have seen and examined very many cases of cow-pox in the cow occurring in large dairies, but these invariably occurred during progress of epidemics of small-pox, such as those of 1880, 1872 and previous years.

(3.) Calves are vaccinated either with lymph from other calves or with lymph from healthy children. The latter method is quite as efficient as the former, and is recommended by the very highest authorities in Germany where this whole subject has been treated in the most scientific manner.

(4.) Very little supervision is exercised in this country over the production of vaccine lymph. The State Board of Health of Minnesota maintains a small plant and produces lymph of a reliable quality. In my opinion all vaccine production should be under the supervision either of State or National authorities.

(5.) The only security now given is the guarantee of the producer.

Finally, the principal fault in vaccine production in this country is due to the fact that the whole question has been treated commercially instead of scientifically. It is, however, pleasing to know that the movement is tending in the right direction.

Recent inspection of vaccine establishments has undoubtedly effected considerable reform, but there is abundant room for more. Too much reliance should not be placed upon bacteriological examination of vaccine products made upon a few specimens. No good sanitarian is willing to pronounce upon the quality of a sample of water from the chemical analysis alone, but finds it necessary to have a thorough knowledge of all the surrounding circumstances. The same is true in regard to vaccine production. A well-managed establishment under careful supervision, and conducted upon the best principles may be depended upon to furnish a good product.

The best argument for compulsory vaccination is the present condition of Germany, which has been practically free from small-pox for the past 20 years, in consequence of thorough enforcement of the law. Most of the deaths in Germany, from small-pox, in three years have been those of recent unvaccinated immigrants from Russia, France or Italy.

The Imperial Board of Health of Germany has just issued a publication, entitled "Small-pox and Vaccination," which presents very fully the history of the subject, together with much that is valuable with reference to present conditions in that country. Many figures are presented which do not reflect creditably upon the condition of the neighboring countries, and show that the prevalence of small-pox in these communities is inversely as the thorough manner in which vaccination and re-vaccination are conducted.

It appears from this document, that, in the five years (1889-1893) the death-rate from small-pox in the German Empire was only 2.3 in each million inhabitants, while in the neighboring countries it was as follows:

In France	147.6	per million.
In Belgium.....	252.9	"
In Austria.....	313.3	"
In Russia.....	836.4	"

Or, in other words, had the same rates of mortality from small-pox prevailed in Germany as existed in each of these four countries, there would have been a loss by death from small-pox, respectively, of 7,321, 12,584, 15,558 or 41,584, according to the country with which the comparison is made. These figures speak for themselves. It is no

wonder that the compiler in closing the volume pays a glowing tribute to the memory of Jenner and expresses the hope that "the number of those who look back upon this day (May 14, 1796) with thankful hearts, may continually increase."

Yours Respectfully,

SAMUEL W. ABBOTT.

Benj. F. Lee, M. D., Secretary State Board of Health of Penna., replies:

Mr. Clark Bell, Secretary Medico Legal Society, No. 39 Broadway, N. Y.

Dear Sir:—The matter of which you request information from me to be used in the discussion at the meeting November 18th, is of so much interest and importance that I take the liberty of replying to your communication. As a portion of my answer, I send you a copy of "Public Health" for July last, and refer you especially to page 145, on which, and the six pages following, you will find a very full statement of the methods pursued at the Lancaster Vaccine Farm, the product of which, I use exclusively and do not hesitate to recommend.

With regard to questions 4 and 5, I would say, that the State Board of Health makes frequent inspections of this establishment at unexpected times, and that, both the precautions taken and the result of the bacteriological tests as well as the clinical evidence, convinced me that pure lymph is used in propagation and is dispensed from this establishment. I have the honor to be,

Yours very truly,

BENJ. LEE.

The extract to which Dr. Lee refers, is from the report made June 15, 1895, by Robert L. Pittfield, M. D., Assistant Bacteriologist Pa. State Board of Health to the committee on preventable diseases of that Board, published in the new journal called Public Health, vol. 1, No. 3, p. 145, and relates to the Lancaster County Vaccine Farms, of Marietta, Pa. A description of the method employed in the vaccination of the calf is given in detail, as follows:

11. Vaccination of animal.

a. Description of method.—The animal is strapped to the V. piece with girths, and then is swung over on back, the spinal column does not rest on the table, a space in the cushion accommodating it.

b. Point of selection for vaccination.—The point selected is the scutcheon over the biceps muscle and sometimes anterior to the udder and on the back, but it is considered best by Dr. Alexander to use the scutcheon.

c. Area of scarification.—The area of scarification is about the size of a half dollar, and six to eight are made on each leg.

d. How Scarified.—The animal is carefully washed with bichloride solution, twice shaved and washed, dried with a clean towel, and then scarified with knife previously sterilized. The lymph from the spades is carefully rubbed in.

e. What preparation given the hands. Clothing of operator.—Operator washes his hands in bichloride, and is dressed in a clean suit of white duck, and every precaution is taken by the operator to keep his person clean.

f. Character of seed used.—The seed used is preserved on spade points in a refrigerator, where all other vaccine matter is preserved.

12. Maturity of vesicle and time of removal.

a. Temperature at highest.—102½ degrees to 104 degrees F., taken twice daily.

b. Removal of lymph.—The operator is guided by the areola about the vesicle, as to the proper time to remove the lymph, also by the temperature. The proper time for removing the lymph is from 5-7

days, depending upon circumstances. The crust is hard to keep in place and is convex rather than concave as in the human subject.

13. Food and water.

a. Regarded by operator.—These play a very important part in the development of the disease. If the least musty food or unpalatable water be given, the animal may refuse to eat or drink for from twelve to twenty-four hours. This will frequently result in an abortive condition of the vesicle. Plenty of good, fresh water is absolutely necessary if you desire a lymph that will give the greatest perfection of development and the least inflammatory action.

b. Character of food used.—Corn chop and bran (half of each by weight), mixed with cut hay in a concrete mixing box, which can be kept clean and will not sour readily, have given them the best results, next to forage crops, of which they use cow-peas and oats, green wheat and rye, clovers, Hungarian millet, and fodder corn. Food from a silo they are unable to use, as it requires from two to three weeks to get the animal accustomed to it, and changing them every thirty days renders it to them an impossible food.

c. Water supply.—Water works, having three large reservoirs arched over in the hill-side and supplied with water from two sources; one from the roof water and the other forced by a wind pump from a well 77 feet deep; this water is river water, filtered through a sandy loam. All the water from these reservoirs, used for watering stock, operating uses and cleaning purposes, is first filtered through brick, then through Pasteur plates arranged in reservoirs. These reservoirs are located sufficiently high to enable the tapping of water throughout the establishment. They are also connected with the town supply. The cattle are watered by turning water into their troughs, which are lined with galvanized iron. This insures them a much more ample supply than the use of buckets in the hands of employees.

14. Preparation of vesicle.—This is done on the 7th day generally. care by means of a knife

a. Cleansed.—The parts around the vesicle are cleansed with a solution of bichloride and are then washed with water.

b. Removal of crust.—This is accomplished with great care by means of a knife, and the parts under this are sponged with sterile water and sponge until all the pus has been washed away.

c. Care taken with vesicle.—The vesicle is carefully cleansed and the lymph, as it exudes, is gathered from the base of the vesicle by means of sterile brushes and applied to the points. The points are not touched by the operator with his hands or person at any time.

d. Application of lymph to points or tubes.—The lymph, by means of brushes, is painted on the points held in wooden clamps holding 50 each.

e. Collection and preservation of seed.—This is collected upon spade points and preserved in refrigerator.

f. Fluid lymph.—Is collected from the cleansed vesicle and mixed in 30 per cent. to 50 per cent. glycerine. It is collected by a scalpel from the vesicle and flows from it into a receptacle previously sterilized. It is then run into capillary tubes.

15. Care of points and tubes.

a. Preparation of naked points.—These are soaked in alcohol and placed on a screen and then a lighted match ignites all the alcohol. They are then placed in a hot air sterilizer for an hour at 150 degrees C. This double procedure is unnecessary.

b. Sterilization of points and tubes.—This is accomplished in a hot air sterilizer.

c. Packing of points.—After the points are inoculated they are dropped from the frames into clean jars, and from these they are packed into glass bottles. There is a minimum amount of handling with the fingers in this operation.

d. Crusts.—Crusts are sold but not advertised.

e. Lymph tubes.—Tubes sufficient for one vaccination are filled by capillary attraction. Other tubes, containing enough for 10, 20 or 50 vaccinations, are filled and corked at one end, the other end is drawn to a point, the lymph is caused to exude by pressing in the cork.

16. Bacteriological control.—No bacteriological control is given, but bacteriological principles bearing upon aseptic sterilization are carefully followed out. Great care is evinced in this direction and much effort has been spent to render the product as clean and aseptic as possible.

Bacteriological examination of vaccine products.—In common with these of other places, those of Lancaster County Farms were purchased in open market and submitted to the same method of analysis previously described.

Number of bacteria on vaccine points and in fluid lymph.—

Product	Gelatine	Agar at 37 degrees
One point	175
One point	175
One drop fluid lymph	0

Summary.—This is an admirable establishment in every particular. No objections could be found in so far as hygienic arrangements go; the farm is thoroughly drained and the interior of the buildings scrupulously clean. The animals seemed well fed and of excellent breeds. The habitual and thorough testing with tuberculin in every animal, in conjunction with the physical examination, is a step in the right direction. It seems a needless precaution to filter water, and to burn off the points before sterilizing them. The excellent bacteriological showing of the product, purchased with the others in a large drugstore, is an index to the hygienic condition of the cattle and the pains taken in removing the lymph to keep it aseptic.

The report of Dr. Pittfield from which I make some extracts of matters germane to this discussion in addition to that part of it cited by Dr. Lee, is of great interest. I quote from Dr. Pittfield's report to the Pennsylvania State Board:

"There are a number of problems to be discussed in dwelling on the propagation of vaccine lymph. These concern the elimination of the diseased cattle from the healthy; the sterilization of the points, hands, instruments, etc.; the care of the vesicle; the preparation of the skin; and the aseptic removal of the lymph.

At but two of the stations visited was tuberculin used; in two, the animal was killed and examined before the lymph was sold. The possibility of infecting points with anthrax bacilli exists, since in many localities cattle are often affected with this disease. At no establishment could we learn of any precautions against such a possibility. In many establishments malignant edema and tetanus bacilli might find their way to the vesicle and thence to the points and tubes, because dust in large quantities abounds in the incubating stables. This is especially true in those farms where the hay-loft is directly above the stables, as dust from hay and manure is well known to contain these germs, and such dust could easily filter down directly upon the vesicles. Cases of gangrene and tetanus following vaccination have been reported.

In many places simple cleanliness is sadly neglected; in others, however, the principles of asepsis and antisepsis are rigidly observed, and lymph from such establishments should be used in preference. Sterilization of the hands, instruments and apparel is a great advance in the right direction, as is a similar treatment of the points and tubes.

The sale of crusts, because of the pus and dust contained in them,

should be forbidden by law. Some operators not only render the fresh skin aseptic by scrubbing and antiseptics, but also carefully, clean the base of the vesicle, after the removal of the crust, with antiseptics. If this does not interfere with the taking qualities of the lymph, it is an excellent procedure. In some places we found that the pus layer, for such it is, was not regarded by the operators as pus. In fact, some regard it as a particularly strong lymph and charge their points with it. Such points should not be used. Microscopical examination of this substance reveals pus organisms in large quantities, also typical pus cells.

Points should be placed in frames and carefully sterilized, and after this they should not be handled at all. The application of the lymph to the points by means of a sterile brush is an excellent procedure. It is not only economical, in so far as time and saving of lymph go, but it is also scientific. The individual application of the point to the vesicle irritates it. The point is likely to be contaminated by the fingers, and the drying of these points on dusty, unsterile plates is antiquated and unscientific."

Regarding the propriety of compulsory legislation, conceding the utility and efficacy of vaccination, and that the virus is properly prepared and the vaccination carefully conducted.

Upon the law of the matter I am disposed to concur with the views of Col. Prentice.

In case of a threatened epidemic where the safety of the lives of others and general immunity from the spread of the disease was the question, the State it may be claimed would have a right to interfere against the private and individual right as in the case of a conflagration, in tearing down a building in its path to save others beyond it.

It seems to me that enough has already been disclosed in this discussion to make the State hesitate in assuming the extraordinary power of compulsion over an individual protest.

There are well authenticated cases of terrible results, of health permanently ruined and life rendered not alone valueless but horrible by vaccination.

If it should be claimed by the sufferer, that the physician who operated, (or the state if compulsory) was liable in damages for the injury it would be impossible to meet or deny the justice of such a claim.

It seems to be true that there is no State or official supervision over the manufacture or sale of the vaccine matter now in universal use, and this, where vaccination is compulsory, is inexcusable neglect. The manufacture is at present a purely commercial and business matter, and it is very doubtful whether the courts would sustain the enforced vaccination of a citizen against his will, without the State itself assumed the responsibility, not alone of the purity of the virus, but of the outcome of the administration.

Those American officials who are in a situation to be best informed upon this subject, like Dr. Fowler, C. S. Lindsly, Moreau Morris and others are unwilling to favor making vaccination compulsory. Even while conceding and asserting, the power of the State they doubt the wisdom and propriety of such a law, and on a view of the whole ground, I incline to that view.

The State of the public mind is such, and so great is the doubt and distrust of so large a portion of the educated classes (not the ignorant or prejudiced alone) that it would be very unwise to attempt to legislate compulsory vaccination, without the State at the same time charged itself with responsibility in all cases as well with the purity of the virus used, as against any unfavorable result to the vaccinated.

On the other hand, the following communication was received from a well-known anti-vaccinationist :

CLARK BELL, ESQ.,

DEAR SIR :—Mr. Joseph Collinson, of London, in his recently published pamphlet, thus describes the method of procuring "calf lymph:"

"In the Government Vaccine Institute, Lamb's Conduit Street, hundreds of calves are operated on in the year. The process is as follows:—A kind of table, with a turning top, is arranged in an upright position, and the calf is firmly secured to it with straps. The table top is next turned flat, so that the calf lies on it. Portions of the belly skin are shaven, and then the poor animal is stabbed in from forty to sixty places, the vaccine matter from a child's ripe arm is inserted, or matter taken from a former calf that has been used in this way; or human small pox matter, taken from a person ill with the disease, is put in. The suffering calf is then loosed and taken to the stable, and the disease allowed to run its course for five days, after which, when the sores are at their height, it is again strapped firmly down upon the table, legs, body, and even mouth tied—a cruel sight! the operator sits down, opens the vesicles on the animal's belly, and the lymph is squeezed out with clamps, the pressure almost invariably causing the lymph to contain an admixture of blood.* This "pure" lymph is collected on ivory points, and is sometimes stored long after taken, then used for the vaccination of children and adults.

It is interesting to note that it is fundamental dogma with the vaccinationists that lymph tinged with the smallest blood corpuscle is unfit for use. Dr. Chambers, writing in a London paper on September 15th, 1886, said:—"I have the personal authority of one of the chiefs of the Government Vaccine Establishment that little is known of the diseases of calves; that calf lymph cannot be got without the admixture of blood, and that in consequence he wished the calf lymph at the bottom of the sea."

The late Dr. W. J. Collins, a public vaccinator of twenty years' standing, strongly denounced the fallacy of attributing mischief solely to ensanguined lymph, pointing out that the merest tyro in physiology know that lymph comes from, and is part, of the blood itself.

The lymph, he said, contained precisely the same microscopic particles as are found in fluids capable of producing the acutest blood-poisoning.

The name, too, of this product is interesting from the point of nomenclature, for it is highly misleading. The so-called calf lymph is in reality not calf lymph at all. The real lymph is the natural fluid that circulates in the lymphatic vessels of the calf—a healthy thing in a healthy calf, as far remote from scabs and pox as a day is from night, for, as I have shown, the false is the pus of a particular disease of the calf thrown out upon the skin, due to an unnatural and cruelly induced process."

Respectfully,
NEW YORK, Dec. 3, 1896.

E. C. TOWNSEND,
19 Broadway.

TORONTO, November 16th, 1896.

To the Members of the New York Medico-Legal Society :

GENTLEMEN:—I regret my inability to be present to partake of the rich repast, Legal, Medical and Physical, with confreres in a work which as a State Health Officer for many years has necessarily received much of my attention.

Referring to the question in a five minutes' discussion, it may be broadly stated that compulsory vaccination has, in my opinion, passed

*In about seven days the calf is returned to the butcher, I am told. See also an article in the *Nineteenth Century*, 1878, by Sir Thomas Watson, who states that the creature is "none the worse for what has happened." A transaction of this kind took place lately in Yorkshire. The animal was duly slaughtered. On the carcass being opened, the calf's lungs were found to contain tubercles, a butcher who saw it declaring that he had never seen a worse case. The corporation meat inspector was called in, and he condemned the body as "unfit for human food."

both its medical and legal phase, and is simply one of many questions in "social evolution."

To orient the problem :

1st. The statistics of a century have absolutely demonstrated that by compulsory vaccination, small pox has been, and can be eliminated from the category of diseases.

2nd. That even with a compulsory vaccination law imperfectly administered, varioloid is a disease less fatal than measles.

3rd. That the objections which have been taken to the practice of inoculating healthy persons with the *materies morbi* of attenuated small pox cannot be from the standpoint of a lack in its prophylactic efficiency; but from (a) the dangers which may accrue to a patient of inflammatory complications during the progress of the vaccinia and (b) of dangers due to impure vaccine lymph.

4th. Were there to-day practical objections owing to deaths resulting from either cause through the operation, it must at once be admitted that compulsory vaccination is vicious legislation, as contributing directly to the injury of the individual and therefore to the State and not to be defended.

5th. In practice, such objections do not exist since, with the preparation of lymph, under the direct supervision of trained bacteriologists, its action may be obtained in a normal manner without any lessening of its potency, while the absence of dangerous mixed infections in the lymph may be wholly prevented. The surgical operation is of all the simplest, and infection, through the operation, is to be set down to defective surgery.

6th. While, however, compulsory vaccination has, in my opinion, more than justified itself, the practical question of how the law should be applied is pertinent to the discussion. Were vaccination universal and systematic in practice, it would soon not be necessary, as the disease would be eradicated. Inasmuch, however, as immigrant and other travel keeps introducing the disease into seaports and other large cities with dense populations, the compulsory vaccination of school children as a routine measure is demanded.

7th. In Canada this has not been found continuously necessary in rural districts, though still carried out in many sections, owing to the fact that sanitary organization has attained a degree of development by which a centre of infection is promptly isolated; persons within the radius of the infection are compulsorily vaccinated, and should accident have seemed likely to have caused many to be exposed, whole districts may under proclamation of the State or Municipal authorities be at once brought under the operation of the compulsory Act.

8th. In conclusion, it may be stated that while in practice, with small pox present or in the vicinity of any district, vaccination is carried out generally under compulsory law with penalties attached, yet it seems reasonable that inasmuch as the refusal in individual cases to have the operation performed, which may be due to personal fears of inoculation and is lacking in those qualities which would create a moral wrong, such refusal can be met successfully by compulsory quarantine of persons or families at their own expense during periods of immediate danger, and of enforcing non-attendance of uninoculated children at school; since the parents of such children have no right to claim educational advantages from the State which holds that compulsory vaccination of all school children, as in a large city, is necessary to the welfare of the State and the safety of its citizens.

I am,

Yours very truly,

P. H. BRYCE, M. A., M. D.

Secretary of the Provincial

Board of Health of Ontario.

It is worth our while to consider whether in the face of the Report of the English Royal Commission adverse to Compulsory Vaccination we should hesitate before we decide in the absence of any epidemic, especially, to enforce by Statute, such an encroachment upon the personal

rights of a citizen as compulsory vaccination, with its attendant risks against and over his protest, which might come from the enforcement of a compulsory statute. Again, when we consider the views of such men as Dr. Samuel Abbott, Dr. Benj. Lee and especially criticise the careful report of Dr. Robert L. Pittfield to the Board of Health of Pennsylvania, in which he reports a careful and critical examination of a large number of the establishments engaged in the manufacture of vaccine virus showing that in the major part great carelessness and negligence exists, as to the purity of the product and that no official supervision exists anywhere, over this manufacture; should we not consider in view of the imminent risk to the citizen from the use of improper and injurious *virus* that some legislation should protect the citizen (if the enforcement of compulsory vaccination shall be legalized), from the serious consequences following the use of impure virus by the State officials?

HAS THE PHYSICIAN EVER THE RIGHT TO TERMINATE LIFE?

BY CLARK BELL, ESQ., LL. D., PRESIDENT MEDICO-LEGAL
CONGRESS.

Perhaps no part of the proceedings of the late Medico-Legal Congress, held in the Federal Court Rooms, in New York City, gave rise to more criticism, than the comments upon this subject, introduced by Mr. Albert Bach, of the Bar of New York City, and one of the officers of the Congress, in the discussion of the papers of Mr. Gustave Boehm and of Dr. L. Forbes Winslow, on the subject of "*Suicide*," in which the author Mr. Gustave Boehm had asserted the right of every human being to end his life under certain conditions.

As it is in such cases better to go by the record, I quote from the language used by Mr. Bach in that discussion from advance sheets of the Bulletin of the Medico-Legal Congress:

The question of the right of a human being to end his own terrestrial life has been frequently mooted. There is opened, by the mere putting of the question, a broad field of argument; and there have been, and there are, able advocates of both the affirmative and negative sides of the propositions involved. In behalf of the negative side, it has been asserted that God's given life is too sacred to be terminated by the wilful act of man; that the duty we owe, not only to our dependents, but to our fellow beings in general, is too imperative to be shirked by the so-called cowardly act of suicide; that the commandment, "Thou shalt not kill," applies as well to the act of self-destruction, as to the wrongful slaying of another; that the welfare of humanity at large, demands that the continuance of human life should in no way be interfered with by man, unless under sanction of law; and that our laws not only, neither

Read before the Psychological Section Medico-Legal Society, October 8, 1896.

Read before the Medico-Legal Society of Indiana, December 21, 1896.

Read before the Medico-Legal Society, December 16, 1896.



PROMINENT MEMBERS OF THE MEDICO-LEGAL SOCIETY.

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of Baltimore, Md.

permit self-killing or recognize any justification therefor, but specifically prohibit it, and provide a punishment for attempted suicide. Those holding the affirmative side of the question contend, that under certain circumstances and conditions, suicide is justifiable, and in support of their contention, they paint and present to us pictures of human suffering so agonizing, so irretrievably hopeless and irremediable, in the light of experience, as to make many waver in their opinion that earthly pains and woes should be forever evidenced, no matter howsoever excruciating, rather than be ended by suicide. The advocates of self-killing cite history to prove, that the act in the past, and among certain people of the present, has been considered the only honorable, manly and respected way to meet defeat and disgrace; and they ridicule those who enact the laws providing punishment for attempted suicide, and scoff at such laws as stupid and ineffectual. There is not sufficient time afforded me to make a comprehensive statement of my views on this subject. I will merely say that I deem our statute law appertaining to attempted suicide absurd and farcical, for the reason that it will not deter any one from attempting suicide, and, furthermore, it induces would-be suicides to see to it that their efforts in that direction are entirely successful.

Personally I can conceive of conditions that would justify a person in ending his life, and in some instances I am convinced that such self-inflicted death would be beneficial to the community at large. There is considerable cant and hypocrisy connected with the discussion of this subject, but before a scientific body, such as this is, we should express our views fearlessly. I admit that the advocacy of advanced and progressive doctrine before weak-minded persons may do harm, but feel that I will not particularly shock any one here present by stating, that I believe that there are cases in which suicide is morally justifiable, and that there are also cases in which the ending of human life, by physicians, is not only morally right, but an act of humanity. I refer to cases of absolutely known incurable, fatal and agonizing disease or condition, where death is certain, and necessarily attended by excruciating pain; where it is the wish of the victim that a deadly drug should be administered to end his life and terminate his irremediable suffering. And, I may add, that I know physicians do so end life, although they term it "producing euthanasia." If those physicians were to use English words rather than their Greek equivalent, we should find them producing an easy, painless death, instead of euthanasia.

These statements were met by Dr. Isaac N. Quimby, of New Jersey, who said:

I must disagree entirely with the learned jurist in his statements, regarding the right of any human being, under any circumstances, to take his own life. There can be no combination of circumstances that would justify a physician in taking the life of his patient. The agony of the sufferer, or even his consent, in no wise alters the case; neither does the certain fatality of the disease change the matter. Human life is sacred, and no law, human or divine, can be found that would justify a physician terminating the life of a patient, and I must protest and dissent in behalf of my profession from the statements made by Mr. Bach.

The physician who errs in a fatal case, or where agonizing pain is endured by the sufferer, must not do so to end life, and he would be amenable, both to the law of God and the state, if he attempted to do so. No self respecting physician would even consider such a murderous proposition.

Judge Abram H. Dailey took part in the discussion thus:

I ask Dr. Quimby this question: Is it right to prolong the agony of a patient if the physician knows positively that death is inevitable in a short time?"

Dr. Isaac N. Quimby, with great emphasis, replied :

To the bitter end. A physician has no right to terminate the life of a patient, even when to prolong that life is to cause the most agonizing tortures.

Dr. Forbes Winslow added :

I quite agree with Dr. Quimby in the views he expresses in such a case.

The sentiments announced by Mr. Bach were denounced in vigorous terms by the New York Sun, editorially, and that branch of the discussion was continued in the Sun newspaper, between the editors of that journal and Mr. Bach. And on both sides of the Atlantic, the views of Mr. Bach met with general disapproval from medical men.

Among the many medical criticisms that have fallen under my eye, one of the most interesting to me was the views of Sir Benjamin Ward Richardson, giving an incident in his own practice, in No. 44, of Vol. XI, of his Journal, (*Æsclepiad*), which will form an interesting part of the discussion here, under the heading of "*Lethal Death in Painful Disease*," and from which I quote :

The New York Medical Journal for September 21, 1895, has a paragraph on what is called "Euthanasia by Homicide," and in which it says that, at the Medico-Legal Congress lately held in New York, it was implied, if not directly stated, that physicians often kill patients deliberately in some merciful way, when they were suffering from inevitable fatal disease or injury. One speaker found no fault with this alleged practice, but rather commended it, as well as the destruction of new born monsters, which was also said to be resorted to by physicians. Such practices it was stated, especially that of taking the life of monsters, had occasionally found advocates among members of the medical profession, but had never been sanctioned by any representative body of medical men; indeed, they had been utterly condemned by the great body of the profession, and physicians all over the world would resent any statement to the contrary, no matter if it were made approvingly.

The writer supposed that:—"there are conceivable instances under which it would be justifiable to kill a person for his own sake; but these are no more apt to involve physicians than persons of other occupations. Medical men aim to prolong life; they do not destroy it because it is painful to such a degree that the sufferer thinks he would prefer death."

This paragraph brings to my mind a case which occurred to myself, in which the facts were of singular import. The late Mr. Jervis asked me to go to an hotel not far from here, where he was attending a patient, in conjunction with the late Mr. Cæsar Hawkins. He wished me to go without him or Mr. Hawkins, but I declined until Mr. Hawkins himself sent me a short letter to the same effect, and in which he pressed me earnestly to concede. I was informed that the patient was suffering from malignant disease of the throat, and had taught himself to administer chloroform to himself with the intention of relieving pain, or if it so happened, of destroying life. It was felt that if he destroyed life, he would be guilty of suicide, and that not only would the feelings of the family be harrowed, but that there might be a dispute about property in the administration of the estate. The patient had read my edition of Dr. Snow's work on "Chloroform and Anæsthesia," a work that was then attracting a good deal of notice, and he wished to see me, hoping that I would ratify his treatment, while the others, including both practitioners, trusted that I should have influence enough to stop him. On my visit, I found a deep, wide, malignant ulcer at the back of the pharynx of the sick man, involving a pulsating vessel, which could be seen pulsating. The patient inquired of me how long he should be likely to live, and if an operation were possible. I was obliged to confirm what my predecessors had said—namely, that an operation was impossible, and that death might be imminent from the rupture of the vessel, whilst, unfortunately, it was certain under any circumstances. He, then, lying down in bed, took up an inhaler which he had primed with chloroform, and put himself to sleep, on which the inhaler fell from his hands. It seemed a very happy sleep, and I watched him for half an hour or more. On his recovering consciousness, he explained that he had no other mode of relief; that he could not swallow properly; that he spoke with difficulty, but was soothed at once by the chloroform when he inhaled it, whilst any kind of medicine, administered by the mouth, produced such intense pain, that he would rather die than bear it. I explained to him all the difficulties, proposed hypodermic injection, which was not very well known at that time, and injected him twice with morphia, but without affording the same relief he had obtained by the chloroform. He said that he had used the chloroform for seventeen days, and that according to his own judgment, the ulcerous surface had contracted, and was much less painful so that he could swallow better. I went several times and myself administered the chloroform, but in spite of everything, he had not infrequently got it for himself, and slept under it for the greater part of the day and night. This went on for three weeks, with a skilled attendant; and, I am bound to say, as a matter of precise fact, that he improved. I have no doubt that contraction of the open surface occurred; that the pulsation was not so marked; that he spoke better and more cheerfully; and that he swallowed better, more freely and with less pain. I should have been content to go on with the treatment, being deeply

interested in seeing how prolonged sleep would act in such a case. Also I lost any dread that death would follow the application and I was given to feel that if I were exactly in that man's state of hopeless misery, I should like to be treated precisely in the same way. He was removed, however, from our care, taken to some health resort, was there preemptorily refused the chloroform, and in about four weeks died from pain, sleeplessness, inability to swallow food, and the consequent exhaustion, with wide extension of the malignant mischief.

The question is :—What is the right thing to do in an extreme case of this kind? I hold tenaciously to the general opinion of the profession, that it is best not to recognize what may be considered slow, suicidal attempts, but I think the plan carried out by this patient was justifiable. It was so on all grounds, and it was, perhaps consistent to attend to the wishes of the patient in such a dilemma. But what was most important, was the circumstances that the method seemed useful, and straightforwardly was useful, as a mode of cure. Menander said, that all diseases were curable by sleep,—a broad statement in which nevertheless, there may be something that is true, for good sleepers, are ever, as I think, the most curable patients; and I would always rather hear a sick person had slept, than had taken regularly the prescribed medicine during sleeping hours.

There has always been a popular impression that a physician had the right to prevent the birth of the monstrosities or monsters when they occur. Such has been the popular belief, and so far as I know, none such are permitted to live by medical attendants. Medical men can best state what their own practice would be in such cases.

If the cord was not tied it would usually prove fatal. Neglect to tie the cord properly would result in death. Some physicians may neglect to tie a cord when they are unwilling to kill, knowing that death would probably ensue if they did not tie it.

This has been held to be manslaughter in the mother, and would be so held as to the physician who acted from intentional design.

Reg. v. Conde, 10 Cox C. C., 547.

Reg. v. Bubb, 4 Cox C. C., 455.

Reg. v. Mobbatt, 5 Cox C. C., 339.

Reg. v. Edwards, 8 C. & P., 611.

The English law, however, does not allow the destruction of life in monstrous births; Taylor's Medical Jurisprudence, 566, 601, 11th American Edition. Though a

monster could not inherit under English law, and tenancy by courtesy would not vest ; Ib. 598.

But able medical men have insisted that the Cæsarian operation (*Hysterotomy*) is legally justifiable, when the life of the mother is in danger.

It was, by an ancient view in England, however, supposed to be performed only after the death of the mother, but cases have occurred when it has been successfully performed, and the life of both mother and child saved ; but the act could not be classed as criminal, even though the life of the living child had to be sacrificed to save the mother's life.

The courts have sustained the right of a physician to destroy a living unborn child in order to save the life of the mother, as in a case of deformity of the pelvis in the mother, when normal delivery of the child was impossible.

As this rests upon judgment and opinion as to the physical ability of the mother, it should be exercised with great caution, and only on full consultation, and even then not if any doubt exists, because,

a. The Cæsarian operation, in such a case, might save the mother and child.

b. Because, in many cases, after experienced physicians have decided that natural birth was impossible, by reason of pelvic malformation, and the Cæsarian operation decided upon, natural birth has followed before the operation was performed ; Cases cited by Taylor in a French Hospital, 507, 12th Amer. Edition, (Bell's), 'Taylor's Medical Jurisprudence.

c. The operation of symphyseotomy, or enlargement of the pelvis at the brim, is made of more than an inch, is affected without serious risk, and even larger temporary expansion in the pressure of delivery. Also a case in Scotland, in 1847, is reported in Edinburgh Monthly Journal,

1847, p. 30, and is quoted by Taylor.

Medical responsibility, in this class of cases, arises usually at an earlier stage than at the full period, when the Cæsarian operation would be possible.

It is usually performed by what is called, among medical men, "*inducing premature labor.*"

It is regarded as justifiable by physicians in three classes of cases :

1. Certain cases of disease.
2. Deformity of pelvis, preventing natural, normal delivery, and;
3. Excessive vomiting in pregnancy, which threatens the mother's life.

Casuists have denounced this, as both immoral and illegal, but high medical authorities justify its morality and legality; Ramsbotham's Obstetrical Med. p. 328, 5th ed.

Taylor's Medical Jurisprudence, 12th Ed., 529, fully justifies this practice, on both moral and legal grounds, because medical men claim that when it is *bona fide* resorted to for and with the hope of benefitting the mother, and not with a criminal design, it cannot be held to be unlawful.

And this view is maintained, under English law, notwithstanding the fact, that no statute law in England makes any exception in favor of medical men in such cases; nor is there any exception, in the statute regarding wounding, as to surgical operations; Ib. 524.

And this even when the death of the child is actually intended and accomplished, but fully believed to be necessary.

The Roman Catholic Church forbids the sacrifice of the child, even though the life of the mother might in all probability be saved thereby.

This would doubtless control or affect the action of the surgeon of that faith, but medical authorities, in Eng-

land and America, justify the destruction of even a seven month's child to save the mother of the child. *Vide* Dr. A. F. Currier, Vol. II, Hamilton's Work, pp. 460-1.

The question raised by Mr. Bach, as to the right of the physician to terminate the life of a patient suffering from an agonizing and fatal disease, on the request and even entreaty of the patient to end his agony and terminate his sufferings, presents some peculiar ethical questions.

Take the case of a man suffering from cancer of the throat, near the fatal moment, when the disease will eat into the carotid artery, and the act is demanded by him as one of humanity and friendship to the sufferer—as substantially that presented by Mr. Bach in his remarks at the Medico-Legal Congress.

Dr. Edward P. Thwing, one of the most charming of men, a highly esteemed physician, and also a clergyman, who recently passed to his reward in China, read a paper on this subject before the Medico-Legal Society, in 1888, "Euthanasia, in Articulo Mortis," from which I will read a few selections, as indicating the conduct and motive and action of one medical man of the highest standing and purity of life; Medico-Legal Journal, Vol. VI, p. 282.

"EUTHANASIA IN ARTICULO MORTIS."

EDWARD P. THWING, M. D., PH. D.

Death is ordinarily painless. The phenomena which precede it often indicate extreme suffering, but the final juncture of dissolution—measured by moments or hours—is generally one of physical and mental placidity. And yet we have in medical nomenclature, the word *caco-thanasia*. It expresses a fact. Some deaths are agonizing. The spectacle is harrowing to survivors, even if assured that the convulsive movements are partly or wholly automatic and unintelligent. The propriety of anæsthetics in such cases is naturally suggested.

Now the question arises just here, has a dying man a right to demand euthanasia thus introduced? Or has his family this privilege? How far can the medical man extend relief to the dying? Is a *coup de grace* allowable? Clearly enough he cannot, morally or legally, abridge life by an hour.

Common law guards this point by the most sacred sanctions. It rests on the divine precept, "Thou shalt not kill." The character of the

patient's sufferings? whether resulting from some terrific casualty or from hopeless disease, their intensity and probable duration are matters not relevant to the issue in a legal point of view.

The patient's prayer to be put out of misery must be disregarded. Galen's dictum, "*Dolor dolentibus inutilis est*," we admit. Equity—which is good sense used in the interpretation of law on the part of its administrators—will regard the intent of the physician who humanely assists the patient in, or out of his sufferings; still, the letter of the statute stands. We may not give the mercy stroke. Hence the Cynic Phrase of long ago, "*Durum sed ita lex scripta est*."

On the other hand, while a criminal suit might be brought against a practitioner for hastening death, a civil suit for damages might be brought for professional neglect if he does not do for his patient all that he should do, even in the article of death.

The following case presents no novel features in its medical aspects, but it is cited to elicit a discussion, here and elsewhere, of its forensic relations.

Last June, a telegram called me to a distant city to a person stricken with apoplexy and hemiplegia. "The age of the patient, a widow of sixty-six years, the severity of the attack and her plethoric habit, promised a fatal issue within a day or two. She lingered, however, five days, speechless from the first, and comatose. Her vigorous constitution yielded but slowly. Automatic movements like pulling of the clothes, lifting the hand to the head and other signs of restlessness, continued until near the end. The head and eyes were turned to the paralyzed side—which is unusual—the pupils were equal, the face flushed and livid, pulse dicrotic and loud rhoncal sterterous, respiration twenty-seven, extremities cold, and the bruit humorique in the pre cordial region marked. Signs of suffocation appeared.

The attendant physician had left the case in my hands forty-eight hours before, believing that life would soon be extinct. The reality of suffering I could not admit, but the appearance of its actions purely reflexed, was painful to me. As her surviving kinsman, I took the responsibility of administering a mild anæsthetic, moistening a handkerchief at intervals from a vial containing two drachms of chloroform, and six drachms of sulphuric ether. The handkerchief happened to be one just saturated freely with cologne by the nurse, so that the substance inhaled, as well as the method of inhalation produced a bland, anodyne effect.

Essential oils have sometimes been used, in foreign practice, to cover the repulsive odor of ether. The handkerchief was not held so near the nostrils as to prevent the free admixture of atmospheric air, and the facial expression of the unconscious sufferer was carefully studied. In two or three minutes the sterter ceased. The spasmodic actions of the arm were arrested. Respiration became easy and a general quietude secured. Euthanasia was gained and apparently painful dissolution avoided.

Fifteen minutes after drawing the anæsthetic, the final breath came, without the slightest spasm of the glottis or respiratory muscles, without any other physical struggle or sound. At the autopsy—which by the way was revealed excessive sanguineous effusion, red softening and clot

in the interior, ascending convolution, calcic and fibrus degeneration, thrombosis of the basilar vein and other vascular obstructions—one of the five physicians present gave a case where he had, at the request of the parents, administered ether to a child suffocating in membranous croup, and produced euthanasia, not less to the relief of the parents than to that of the patient.

The queries, therefore, again return. Has the dying man a right to ask of us this or some other form of assistance? If he is speechless may his family demand it? How far may the medical men extend this boon to the dying?

This paper created as much remark and adverse criticism as did the view of Mr. Bach at the Medico-Legal Congress, and Mr. Leslie Stephen assailed the author of the paper, and the Medico-Legal Society for allowing it to be presented, by a very strong and denunciatory article, entitled, "Murder According to Law."

I am of those who regard it as beyond the right of the physician at law to intentionally destroy life in cases of this character. And I believe that the advance of scientific knowledge has been so great, in the use of anæsthetics and remedies to alleviate human suffering, that it is now in the power of the intelligent physician to relieve suffering and pain, in all stages of disease, however agonizing, and that it is not alone the right of the physician, but his bounden duty, not to terminate life, but to extend the relief by well-known remedies to assuage pain in all stages of disease; but that this right and this duty exists even in alleviating the agonies of death itself, not as a cause of death, but as robbing it of its terrors and agonies.

An old doctrine has recently been brought forward as to the hopeles and incurable insane, and some other of the defective class of humanity; and the power and right of society, in its own interest and defense, to consider the propriety of arrestion life in the interest and for the benefit and welfare of the living.

The Savage regards it a sacred duty to end the life of

any member of the tribe, who become incurably mad, and I recall a tragic description of the method employed among an aboriginal tribe of American Indians, witnessed by a lady, long a resident and teacher among them, when from a high sense of public duty, all the men became the ministers of a rite that ended a life no longer of value to the possessor, or of the slightest use in the tribe in the chase or in war.

The doctrine of Malthus rests on a lower plane than the ethics of the aborigine, and it is difficult for us, without training and environment to pass judgment upon it.

If a great man is stricken with paresis, and he commences that living death, that "dying at the top," as Dean Swift died, who shall say that philanthropy, humanity, or the sacred teachings of religion, demand the extension of a life, past consciousness, past even suffering; and that duty makes its prolongation a necessity, higher than the humanity which kills our beast, when it has suffered irrecoverable injury.

We shoot a favorite, highly prized and loved horse, to (as we say) "end its misery," who has broken a leg, or met with such an accident as cannot be cured; but we do not thus reason of the man or woman, who, stricken with a suspension of all the faculties of consciousness, lives on, unconscious of suffering, or of the value of life.

Under our civilization, no power is given by the law to end even such a life, but the inherent right of society to regulate its affairs, in its own best interests, must be conceded to be broad enough, to justify any legal enactment, passed under the forms of, and not inconsistent with the organized law, of any community authorizing the termination of human life in such cases.

This would require legislation, however, in America, England, and indeed in all English speaking countries, where the principles of the common law was the basis of the organic law of the land.

SOCIOLOGY AND CRIMINOLOGY:

That public interest in sociological studies is on the increase in our day, cannot be questioned. We may recognize its hold on popular thought by remarking, that in the present Congress, more papers are contributed to the department of sociology and criminology than any other. This is not, in my opinion, the result of chance, but is due to the increasing interest manifested in the world of thought in this domain of scientific investigation. Especial stimulus has been given to the study of criminology by the writings of Lombroso and others of his school. Enrico Ferri has touched it with his brilliant lance. Hermar Kornfeld, Morris Benedikt, Kraft Ebing, Morel, Le Grand du Saulle, Brierre du Boismont and Prosper Depine on the continent; Havelock Ellis, W. W. Ireland, Pritchard, Thomson, Dr. Nicholson and W. Douglas Morrison in Great Britain; and many other writers of distinction have illumined its importance. The International Congress of Penal Law attracted many great names from all the world to this subject.

It is not crime alone that we now study, with methods of punishment, sentences, prisons and their management, including discipline and corporal punishment in prisons, all the offenses and the modifications in penal statutes; but we are coming to study more the criminal himself, his characteristics, degeneracy, heredity, and, above all, environment. Are punishments for crime, as defined in our penal statutes, really deterrent? Has the State the moral right to inflict punishment in any retaliatory spirit, as is now oftentimes the basis of penal statutes? And if ex-

perience demonstrates that excessive or prescribed forms of punishment do not act, in fact, as a deterrent in diminishing crime, should we not consider, with greater care, what modifications are proper, to reach the end desired, namely, a perceptible decrease in the volume of crime, as well as the protection of society?

The lesson of the repeal of the long list of capital crimes in Great Britain since the day when sheep-stealing was a capital offense, must not be lost. Severity of punishment does not appear to operate as a deterrent. It seems to be true that the fear of the scaffold rarely deters the murderer. Crime seems in the ocean of humanity to be the sum of social causes which, like great rivers, flow toward and empty into it. Its Amazon is no doubt alcoholic stimulants, which, more than all other causes combined, constitute the inevitable, terrible, irresistible scourge of the race. In its currents there appear, as tides and eddies, insanity, epilepsy and physical degeneracy; not always in the parent, but more certain in the offspring. Its movements run, like the blood of man, into the veins and lives of children's children, with a taint as terrible as that of leprosy or syphilis. The burdens to the State for the care of the insane, in the rural districts or counties, notably in an agricultural county like Yates County, New York, are in this year of grace actually greater than the cost of the schools, and almost equal to the entire other expense of the State government, including the canals. When shall we have the courage to look this awful question squarely in the face and decrease the volume of crime? Not by penal laws for the punishment of the criminal, (often the victim of his birth and environment), but by striking at and repressing the cause.

The recognized defects in our penal laws, especially in Great Britain, the United States and many of the contin-

ental states, may be summarized as follows: (1) The principle of equality of sentences as to their duration, as now existing, is fundamentally erroneous and vicious. (2) It is wrong to make arbitrary punishments for the same offenses against all offenders alike. (3) Criminal laws must be so framed as to meet the social conditions of criminal classes. Laws based upon the social condition of men in the ordinary walks of life fail. They should rather be aimed at the social life and condition of the criminal classes. I quite agree with W. Douglas Morrison of the Wandsworth prison in England, when he asserts that "the criminal is a product of anomalous biological conditions, as well as adverse circumstances." (4) Some plan should be devised in the administration of punishments, under which the principle of determinate sentences should be applicable to the individual condition of the offender. The same offense should not receive the same punishment in all cases, as, for example, when committed by an adult, or a child, or a youthful offender, or a woman. (5) We must consider whether Bentham was right in insisting that we should, in adjusting our methods of punishment, look as much to the nature and condition of the offender as to the nature of the offense. Much of the failure of our present system as a protection to society is unquestionably due to our ignoring this fundamental law in our present penal statutes and punishment of criminals. Mr. Morrison lays down an important principle when he claims that we should place our prisons on the same basis as the penal laws; that prisons should reach the causes and conditions which produce the criminal, and the penal statutes be placed on the same plane.

THE LEGAL ASPECT OF THE MAYBRICK CASE.

BY CLARK BELL, ESQ., OF THE NEW YORK BAR.

The report of the Woman's Committee of the Psychological Section of the Medico-Legal Society presented for discussion at the October Meeting of that body for action, presented the following propositions:

Your committee are of opinion that the case of Mrs. Maybrick is one that is fairly within the realm of the Medico-Legal Society and notably of the Psychological Section.

We are of the opinion that the verdict of the Jury was not supported by the evidence of that case.

We concur in the opinion expressed by Sir Charles Russell, now Lord High Chief Justice of England, in commenting upon the unfair charge of Sir James Fitz James Stephen, the trial Justice in his charge to the Jury. "He passionately invited the Jury to find a verdict of 'Guilty,' taking two days to sum up the first day as a Judge and on the second day raged like a violent counsel for the prosecution."

We believe that the language of the charge of that trial Judge, was in violation of that principle of the law of England, which forbids a Judge to permit a jury to ascertain, from either his language or manner the Judge's opinion of the merits of the controversy they are to decide upon. While we recognize the extraordinary power conferred upon the trial Judges in Homicidal cases in England, and



CHIEF JUSTICES DELAWARE COURT OF COMMON PLEAS.

JAMES BOOTH, SR.
1799—1828.

RICHARD BASSETT.
1793—1799.

THOMAS CLAYTON.
1828—1832.

the right sometimes exercised by the British Judges upon what may be fairly deemed their discretionary or even paternal power, either over the accused or the majesty and spirit of the law, we are still of the opinion, that among all English speaking people, there will be no two opinions among Jurists throughout the world, that Sir James Fitz Stephen on this trial transcended the true spirit of the Law of England, in his animadversions against the accused before the Jury who had to decide her fate.

We believe that if the evidence in the Maybrick case could be under English usages submitted to an English Court of Review the verdict of the jury would be set aside and that judgment reversed for Errors of Law.

We concur in the opinion expressed by the eminent English counsel Sir Charles Russell, (now Chief Justice,) Fletcher Moulton, Q. C., Mr. Poland, Q. C., and Mr. MacDougall, after a careful review of the evidence with a view of determining whether in their opinion the verdict was justified by the evidence, that the verdict of the jury was not justified by the evidence.

We are of the opinion that the action of the Home Secretary in commuting this sentence fell short of what it should have been, because if the verdict was right and legal it should not have interfered with the proper punishment of a poisoner, and that if the Home Secretary intervened at all it should have been for a full release.

We are of opinion that the verdict of judicial opinion throughout all Christendom will be: That if under the law of England an illegal conviction cannot be remedied under existing forms and usages under the British Constitution and laws, then that the right of appeal should be engrafted in all cases where human life is at stake, upon the present English system, to prevent miscarriage of justice in future cases.

We rejoice that under the British Constitution there is one woman in England, who has the power and the right to interfere and do justice in this case. We remember her long and splendid reign, unsullied by one unwomanly act; her strong sense of justice, her fearlessness in doing what she believes to be right, and we appeal to her to end this unfortunate controversy, by granting a full pardon to this unfortunate woman before death prevents; because she can legally grant her a pardon, even if she doubts her innocence, without offence to her own conscience, while she would gladden the hearts of a million of her sisters in America who believe that Florence E. Maybrick is innocent of the crime for which she now suffers a lasting imprisonment. All of which is respectfully submitted.

Dated September 9th, 1896,

CAROLINE J. TAYLOR, *Chairman*,
 M. LOUISE THOMAS,
 C. VAN D. CHENOWETH,
 ROSALIA DAILEY,
 THE COUNTESS BETTINI DI MOISE,
 LAURA A. C. MILLER,
 SOPHIA MCCLELLAND,
 SARA W. M. LEE,
 REV. PHEBE A. HANAFORD,
 FLORENCE DANGERFIELD POTTER,
 IDA TRAFFORD BELL,
 ROSALIE LOEW,

Committee.

That report after an animated discussion received the endorsement and approval of the Medico-Legal Society at the October Session of 1896.

The decision of Mr. Matthews, Q. C., the then Home Secretary, in the case of Mrs. Maybrick, was thus announced, (except Italics, which are mine):

"We are given to understand that the Home Secretary, after the fullest consideration, and after taking the best medical and legal advice that could be obtained, has advised Her Majesty to respite the capital sentence on Florence Maybrick and to commute the punishment to penal servitude for life; inasmuch as though the evidence leads clearly to the conclusion that the prisoner administered *and attempted to administer* arsenic to her husband *with intent to murder*, yet it does not wholly exclude a reasonable doubt whether his death was in fact caused by the administration of arsenic."

In the subsequent life of the presiding Judge, the late Sir James Fitz James Stephen, by his brother Mr. Leslie Stephen the matter is thus stated: (It will be seen that Mr. Leslie Stephen, who do doubt had legal assistance in this part of his narrative, omits all reference to the words which are italicised, and which were, of course, not italicised by the Home Secretary).

"The sentence was afterwards commuted to penal servitude for life with Fitz James' approval and I believe at his suggestion, upon the ground, as publicly stated, that although there was no doubt that she administered poison, it was possible that her husband had died from other causes."

And in a new edition of his *General View of the Criminal Law of England* published some months after the trial, the Judge describes the case of Mrs. Maybrick as the only one out of a large number tried before him in which there was "a doubt as to the facts."

Mr. Lincoln, the American Ambassador, had an interview with Lord Salisbury on the subject before the decision was publicly announced and he reported to his Government as follows:

"His Lordship at once replied that the subject had been anxiously considered, and that he believed he could say that the death-sentence would not be executed, as all the medical evidence attainable, left a reasonable doubt as to the death having been caused by the arsenic, administered by Mrs. Maybrick."

And in his subsequent answer to an American petition Lord Salisbury said:

"Taking the most lenient view which the facts proved in evidence and known to Her Majesty's Secretary of State admit of; the case of this convict, was that of an adulteress attempting to poison her husband, under the most cruel circumstances, while she pretended to be nursing him on his sick-bed."

In the face of these declarations by the Judge, the Home Secretary and the Prime Minister, the idea may be dis-

missed that the Government was convinced that the prisoner had really murdered her husband, but looked for some excuse to avoid an execution, which would have created a popular outcry: I was in England at the time of this trial, and I was in a situation to come more or less in contact with public opinion there, outside of Liverpool; and I then formed the opinion, that great doubt existed in the public mind as to the guilt of the accused.

There was also felt in English circles, a strong sense, that the trial justice had not dealt at all fairly with the accused in his charge to the jury.

I then formed the opinion which I still entertain, that had not the Home Secretary interfered and prevented the public execution of Mrs. Maybrick, the public feeling then ran so high, that a change in the English system would have been insisted upon by the general public clamor; giving the right of appeal in capital cases, as a matter of strict right to all condemned to death. It seems clear, that the doubt whether Mr. Maybrick had died of arsenic was really and generally entertained.

What seems to have been wanted, was not an excuse for sparing her life, but an excuse for not setting her at liberty; and a perusal of the medical evidence, given at the trial will satisfy any impartial reader that there were very grave reasons for doubting, whether Mr. Maybrick died of arsenic; while the difference of opinion on that subject continues to agitate the medical profession up to the present.

It will further, I think, be conceded that no evidence tending to prove that Mr. Maybrick died of arsenic, has been procured since the trial, but that on the contrary a good deal of evidence has been procured, which increases the doubtfulness of the cause of death.

WHAT THEN IS THE LEGITIMATE RESULT OF A REASON-
ABLE DOUBT AS TO THE CAUSE OF DEATH IN A CASE,
IN ENGLISH COURTS, WHERE THE PRISONER
HAS BEEN CONVICTED OF MURDER?

Mrs. Maybrick was tried on a single count which charged her with having "at Garston, on the 11th of May, 1889, feloniously, wilfully and of her malice aforethought killed and murdered one James Maybrick by the administration to him of poison."

Arsenic being the poison relied on by the Crown, the Judge told the jury :

"It is essential to this charge that the man died of arsenic. This question must be the foundation of a verdict unfavorable to the prisoner that he died of arsenic."

Therefore, if the jury had entertained the same doubt as to death by arsenic which the Judge, the Home Secretary and the Premier, entertained; is it clear that they must have found the prisoner Not Guilty of the only charge with which they had to deal? Now on any principle of reason and justice why should the fact that the jury had arrived at a wrong verdict on the evidence before them, have militated against the prisoner? The Home Secretary should have dealt with the prisoner as if the right verdict had been found. This was done in the famous case of Dr. Thomas Smelhurst, which, in many of its features closely resembled that of Mrs. Maybrick. The report on which he received a free pardon, stated that "though the facts were full of suspicion against Smelhurst, there was not absolute and complete proof of his fault." And only four years before the Maybrick trial the then Home Secretary, Sir William Vernon Harcourt granted a free pardon to Mr. John Hay, because there was "a doubt as to his identity." Since the Maybrick trial too, the Home Secretary refused to admit that there was anything more than a rea-

sonable doubt in the case of John Kelsall, whom he released. The detention of Mrs. Maybrick on the conviction for murder cannot, therefore, be sustained after the admissions of the Judge, the Home Secretary and the Premier. The only question is whether a life sentence can be justified on the ground relied on by the then Home Secretary, viz: That the evidence clearly leads to the conclusion, that she had administered and attempted to administer arsenic to her husband with the intention of murdering him.

DID THE JURY FIND THIS, OR OUGHT THEY TO HAVE
FOUND IT?

That the jury did not find it is clear. No doubt in finding that Mrs. Maybrick "feloniously, wilfully and of her malice aforethought," killed her husband by administering poison to him they found that she "administered poison to him feloniously, wilfully and of her malice aforethought." Probably the reason why they arrive at this finding was that they thought the poison killed him. They did not think that even if he was a habitual arsenic-eater he would take enough to cause death, or else they thought that if he did chance to do so, he would at all events have told the doctors and asked them for an antidote. The part of the verdict which the Home Secretary upheld was therefore in all probability dependent on that which he rejected; and in fact, if it were conceded that Mr. Maybrick's death was not caused by arsenical poisoning, the evidence of any wrongful administration of arsenic would be very weak. But what the jury found was that the arsenic was administered by the prisoner "feloniously, wilfully and of her malice aforethought." The Home Secretary substituted for these words "with intent to murder." But the import of the phrases in English Law is

altogether different, and the difference materially affects the prisoner's punishment.

It has recently been held in England, that killing a woman by means of an illegal operation is wilful murder. Performing an illegal operation is a felony and if the woman dies in consequence, the operator has killed her feloniously, wilfully and of his malice aforethought.

In another well-known case killing a policeman in the discharge of his duty was held to be wilful murder. In both these cases there was no intention on the part of the convict to kill his victim. This distinction, indeed, is not only pointed out but defended, in Sir J. F. Stephen's works on the Criminal Law (see for instance the article *Murder* in his "*Digest of the Criminal Law*"). And in the case of *Reg v. Cruise* reported in 8 Carrington and Payne, Mr. Justice Patterson told the jury that a crime which would be murder if the victim died might not be an attempt to murder if he recovered—the distinct intention to kill, which was essential to the latter crime, not being essential to the former.

The popular distinction sometimes drawn, that murder is a successful attempt to kill, while attempt to murder is an unsuccessful attempt to kill, has no foundation in English Law.

Murder may not be an attempt to kill at all. The person who performs an illegal operation on a woman does not intend to kill her, but quite the reverse. He wishes for many reasons that the patient will recover, but if she dies the crime is murder notwithstanding, under English Law. And comparing the decision as announced by Mr. Matthews, with that which Mr. Leslie Stephen attributes to his late brother in his life, we at once notice that the latter has omitted the words "with intent to murder." The Judge knew that the jury had not found anything of

the kind, and evidently confined himself to what they did find ; but the Home Secretary went beyond what the jury found and added a finding of his own—a finding on which he afforded the prisoner no opportunity of producing either evidence or argument, pronouncing sentence.

But why did the Home Secretary thus go outside of the verdict of the jury? The answer is plain. In order to obtain an apparent justification for the sentence of penal servitude *for life* which he meant to impose. Had the prisoner been convicted of feloniously, wilfully and of her malice aforethought, administered poison to her husband with intention to injure, aggrieve, or annoy him, the maximum sentence would have been three years penal servitude. Mrs. Maybrick has been in penal servitude for upwards of seven years. If, indeed, the jury had gone on to find that her husband's life had been endangered by the administration, ten years penal servitude (which in the case of a female convict in England is reducible by one-third for good conduct) would have been possible as the maximum sentence. It might perhaps be argued that the jury, in finding that the man died of the arsenic administered, found that his life had been terminated by the administration. But it seems inconceivable that any reader of the medical evidence could have arrived at the conclusion that life had been undoubtedly endangered by the administration of arsenic, though it was doubtful whether death had resulted from it. The doctors who ascribed the symptoms of disease to arsenic also ascribed death to it, and the doctors who said that death had not resulted from arsenic, made the very same assertion about the preceding illness.

It seems clear that the arsenic (whoever administered it) either killed Mr. Maybrick or did him no perceptible harm. But even if we waive the point, the difference between a life sentence and one for ten years is immense. And what

reason have we to think that, if the jury had convicted Mrs. Maybrick of a criminal administration of arsenic which endangered her husband's life, the presiding Judge would have imposed the maximum sentence on a delicately nurtured woman in feeble health and a first offender?

As regards the Home Secretary's charge of attempting to administer arsenic with intent to murder, the case is still clearer. The finding of the jury related to actual administration only. They made no finding whatever as to what the prosecutors themselves described as "an unsuccessful attempt." Still less, of course, did they find that the unsuccessful attempt was made "with intent to murder." And here again Sir Leslie Stephen is silent as to the Judge's concurrence. He probably saw that the Home Secretary was again travelling outside of the verdict—looking for something that might tend to satisfy the public mind—without regard to whether it could be legally justified or not.

The Home Secretary has not, I think, ventured to cite an English statute which enables a jury, on a trial for certain offenses, to convict the prisoner of an attempt to commit these offenses. I am not aware that this statute has ever been applied to a trial for murder, and, judging from the preamble, I do not think it was intended to apply to such a trial. At all events, if it was competent for the jury to have found a verdict of guilty of attempt to murder in general terms, they could not have returned a verdict in the terms of the Home Secretary's decision, which does not charge Mrs. Maybrick with attempt to murder, in general terms, but charges her specifically with two distinct kinds of attempt, which come under two distinct sections of the corresponding statute (24 and 25 Victoria, Chapter 100, sections 11 and 14). But whether it was or not competent for the jury to have convicted her of *an*

attempt to murder, they did not either in terms or by implication convict her of that crime. And if the Home Secretary claims the right of substituting for the actual verdict of the jury that which, in his opinion, they ought to have found, but did not in fact find, how does this differ from punishing the prisoner for an offense of which he or she has never been convicted?

Let me now call attention to Lord Salisbury's answer to the American petitioners—the only attempt that has hitherto been made to define the new charges, and supply the particulars that would be absolutely necessary in framing an indictment on them. She made the attempt relied on, he stated, when pretending to nurse her husband on his sick-bed. Now I think Lord Salisbury will have the honesty to admit that there was practically no evidence of any actual administration of arsenic while Mr. Maybrick was confined to his bed, and his wife was in attendance on him as a nurse. But it was contended that during this stage of his illness she made an unsuccessful attempt to give him some meat-juice, with which she had meddled, and in which arsenic was subsequently detected. As regards this attempt, as already stated, the jury made no finding whatever. Their finding, such as it was, related to actual administration only. But we now learn from Lord Salisbury that this charge of actual administration is in fact abandoned, and that the English Government places its whole reliance on an incident quite outside the finding of the jury.

Moreover, it will be seen that Lord Salisbury is not satisfied to rest this charge upon the evidence given at the trial only. He refers also to certain "facts known to Her Majesty's Secretary of State." These alleged facts have never been communicated to the prisoner nor her advocates, although they are relied on as proofs of a crime for

which she had never been tried, much less has the public been informed of them, but so far as can be ascertained they are wholly unimportant.

As the charge of murder of which Mrs. Maybrick was convicted by the jury does not include the charges of administering and attempting to administer poison with intent to murder, on which the Home Secretary relied, so a conviction or acquittal on the former charge would not in any way exclude a trial by Judge and jury on these latter charges. It need hardly be said that, even irrespective of evidence procured since the former trial, the defense against these new charges would assume a new aspect. New questions would be put to the witnesses, and new arguments addressed to the jury. The trial for murder did not in any respect fulfill the conditions of a fair trial on Mr. Matthews' charge of attempt to murder. As regards the meat-juice, for instance, the Counsel for the defense thought it sufficient to point out that, as Mr. Maybrick had taken none of it, it could not have conduced in any way towards the death which the prisoner was accused of having caused. The question whether anything took place which amounted in law to an attempt to administer the meat-juice was not made the subject of cross-examination or argument, because it was not relevant to the issue before the jury; and a material item of evidence on the point, which had been given at an earlier stage, was not repeated at the trial. But the Home Office has persistently refused, not only to submit its new charges to the jury, but even to hold a public inquiry into them where the witnesses could be further questioned, and arguments arising on their testimony addressed by counsel to the Home Secretary or the presiding officer. If the charges in question are really distinct from the charge on which alone she was tried and convicted, she had never had even

the faintest semblance of a fair trial for them. Indeed they have never been defined by such particulars of place, time, and circumstances as to inform her advocates of the points to which their arguments ought to be directed. An admittedly wrongful conviction for one crime is kept alive for the sole purpose of enabling the Home Secretary to punish the prisoner, without any trial whatever, for totally different offences, without violating the letter of the law, but in complete violation of the spirit and intention of Magna Charta itself.

Finally, though the crimes charged against Mrs. Maybrick by the Home Secretary are punishable by penal servitude for life as the maximum penalty, I know of no instance in which any woman—not to say a lady in delicate health and a first offender—has been sentenced to penal servitude for life on a conviction for them. In a recent case where the attempt to murder consisted of poisoning, and the man's life was endangered, the poisoner (who had received some provocation) escaped with three years' penal servitude.

The severity of Mrs. Maybrick's sentence is in fact as unparalleled as the supersession of both Judge and jury in passing it. Instead of being a necessary consequence of Mr. Matthews' finding, it is a most unusual one, though just within the limits of possibility. The principles of mercy have been violated almost as flagrantly as the principles of justice. A sentence of penal servitude for life is indeed often passed by the Home Secretary—in cases of infanticide, for instances—without any intention of enforcing it.

Many persons thought that this was so in Mrs. Maybrick's case and that she would have been liberated before the present juncture. And most probably this was the intention of Mr. Matthews at the time. But Sir M. W.

Ridley has informed us that the sentence is to be rigorously enforced and that this was also the intention of Mr. Asquith. The sentence must, therefore, now be treated as meaning what it says. Was it a fair or a just sentence to pass behind the prisoner's back without hearing a word in defense or extenuation on undefined charges never submitted to any jury and which at most only rendered it possible as the extreme penalty in the statute book? Mr. Asquith was always merciless, but Sir M. W. Ridley's action in the matter is simply astounding. He literally seems to contemplate mercy for every one except the convict whom "the head of the criminal justiciary of England" has officially declared "to be entitled to an immediate release." He is neither a barrister nor a solicitor; but probably for that reason attaches undue weight to the opinions of his predecessor and his subordinates. A strong protest from the members of the legal profession at both sides of the Atlantic would perhaps open his eyes to the quagmire into which his adherence to officialism and routine has in this instance led him: but even if it were certain that such a protest would fail to procure life and liberty for this victim of Home Office mismanagement and obstinacy, it is imperatively required for the honor and dignity of the legal profession itself. What will posterity think of its members if they permit the intended judicial murder to be perpetrated, without once raising their voices in the interests of justice and humanity?

While I think Mrs. Maybrick ought to have been liberated at once, that is not now the question. The questions that now arise, when we consider the case in its purely legal aspect are these:—1. Can we, after finding the crime of murder unproved, spell out of the verdict of the jury any minor crime punishable by penal servitude for life, and if so, was the sentence of penal servitude for life passed on

this prisoner, for this minor crime, the distinct act of the judge, as the law requires, and not that of the Home Secretary? (With regard to all such minor offences the presiding judge exercises the widest discretion under the English system, but his sentence, if too severe, may be moderated by the Home Secretary, who cannot, however, increase it). 2nd. If so, can we, in consistency, reject the finding of the jury as to the crime of murder, while retaining it as to the minor crime in question? In other words, is this minor crime established by satisfactory independent evidence? 3rd. Is there in the evidence given at the trial such conclusive proofs of a minor offense punishable by penal servitude for life, and not included in the verdict of the jury, as to justify the Home Secretary in dealing with the charge himself, instead of submitting it to a second jury? And did he, in so dealing with it, without allowing the prisoner all reasonable facilities for defending herself against the new charge, both by evidence and argument? and did she receive the benefit of every reasonable doubt that could be raised in relation to it, as a second jury would have been bound to give her, if she had been tried upon such new charge, notwithstanding her previous conviction upon the charge of murder? 4th. Was the minor crime or crimes, thus conclusively proved, of such a nature as to make it certain that the presiding judge would, in the event of a conviction, have imposed the maximum sentence of penal servitude for life? and, if not, did the Home Secretary consult any, and what judges, as to the proper sentence to be imposed for such crime or crimes? Had Mrs. Maybrick been convicted by a jury of any crime not punishable by penal servitude for life, she would now be free. Had she been convicted by a jury of a crime punishable by penal servitude for life she would very probably be free also: for the sentence might not exceed

ten years penal servitude and good conduct would in that case procure a release in somewhat less than seven.

Lastly, the ambiguous utterances of Mr. Asquith and Sir M. W. Ridley suggest another question: 5th. After the Home Secretary, with the concurrence of the presiding judge and the premier, has declared that the crime of which the prisoner was convicted has not been proved beyond reasonable doubt, is a new Home Secretary justified (without any new evidence against the prisoner, and in spite of any new evidence in her favor) in punishing the prisoner for the very crime which had been publicly declared to be unproved? Sir M. W. Ridley's language, though evasive, went far to show that he regarded the crime of murder as completely established. Otherwise, indeed, the strength of his declarations on the subject is inexplicable. If the only crime that was proved against the prisoner was one for which a life sentence went to the extreme limit of the law, and was almost unparalled in its severity, why should he declare that he had come "most emphatically" to the conclusion that it ought not to be interfered with? or why should he say that he had as little intention of releasing the prisoner as his immediate predecessor had, avoiding all reference to the Home Secretary, who originally passed the sentence, and who most probably *did* intend to modify it, like the similar sentences which he passed on unfortunate child-murderesses?

Prisoners of this kind usually receive a life-sentence from the Home Secretary and are set free in seven years at the utmost. It was generally thought that Mrs. Maybrick's sentence was of the same kind until Sir M. W. Ridley declared the contrary in the House of Commons. But now that the life-sentence in her case is declared not to be a matter of precedent and routine, but one to be carried out to the full extent usual in such cases (for if an

English "lifer" lives long enough he or she is ultimately released), we have a right to demand, what offence, punishable by penal servitude for life has been established with perfect conclusiveness? and if penal servitude for life is the maximum sentence for the crime in question, we have a right to ask further, why, and by what authority, has this extreme penalty been imposed? In England a jury is the proper tribunal to decide questions as to the prisoner's innocence or guilt in respect of any specified crime; and, except in the case of the conviction for murder, where the laws compels the Judge to pass sentence of death, the Judge who presides at the trial is the proper person to fix the penalty. Is Mrs. Maybrick being punished for any crime of which she was convicted by a jury? Was her present sentence deliberately passed on her for that crime by the Judge who presided at the trial? And, if so, did it exceed the legal penalty for the crime of which she was thus convicted?

NOTE.—The opinions of the eminent counsel to which reference is made in the Report of the Committee which received the endorsement of the Medico-Legal Society are appended:

RE MRS. F. E. MAYBRICK.

"Having carefully considered the facts in the elaborate case submitted to us by Messrs. Lumley and Lumley, and the law applicable to the matter, we are clearly of the opinion that there is no mode by which in this case a new trial, or a *venire de novo*, can be obtained, nor can the prisoner be brought up on a *habeas corpus* with the view of retrying the issue of her innocence or guilt.

We say this notwithstanding the case of *Regina v. Scaife* (17 Q. B., 238; 5 Cox C. C., 243, and 2 Drew C. C., 281). We are of the opinion that in English criminal procedure there is no possibility of procuring a rehearing in the case of felony where a verdict has been found by a properly constituted jury upon an indictment which is correct in form. This rule is, in our opinion, absolute, unless circumstances have transpired and have been entered upon the record, which when there appearing, would invalidate the tribunal and reduce the trial to a nullity by reason of its not having been before a properly constituted tribunal. None of the matters proposed to be proved go to this length.

"We think it right to add that there are many matters stated in the case, not merely with reference to the evidence at and the incidents of the trial but suggesting new facts which would be matters proper for the grave consideration of a Court of Criminal Appeal if such a tribunal existed in this country.

(Signed) C. RUSSEL,
J. FLETCHER MOULTON,
HARRY BODKIN POLAND,
REGINALD J. SMITH."

"LINCOLN'S INN, 12 April, 1892."

RE MRS. F. E. MAYBRICK.

"I agree with my learned friends that the evidence at the trial, of this case did not justify the verdict, and I further think that this is a case where every possible means of procuring a rehearing should be resorted to; but I am unable at the present period of English law to assent to their proposition that in a case of felony, even if it is assumed that there is an innocent woman in an English prison, the rules of criminal procedure debar the Courts from applying any remedy unless some error making the trial itself a nullity can be shown to exist on the record; and I moreover feel that such an avowal, if made, should be made in the form of a Judgment of the Court and not in the form of an opinion of Counsel.

"In reference to the questions put to us by Messrs. Lumley and Lumley in this case, I am of opinion that, assuming the facts of the case and irregularities of procedure, both by Judge and Jury, set forth in the instructions can be conclusively proved, the Court should be invited *ex debito justitiæ* to set aside the verdict and order a new trial, especially as there is no recorded case of a refusal by the Courts to grant a new trial in a case of felony. While, on the other hand, the case of Regina v. Scaife (17 Q. B., p. 258, and 18 Q. B., p. 773) stands unreversed, in which case the prisoners were convicted of felony at the assizes by a properly-constituted jury upon an indictment which was correct in form, and where, notwithstanding this, the Court of Queen's Bench, consisting of four Judges sitting in banco ordered that the verdict be set aside and a new trial granted, and where the prisoners, having been again convicted at such new trial, underwent a fresh sentence of the law.

"I deem it therefore presumptuous in me, as Counsel, to advise that any Court would overrule that case, or would regard the Rules of Criminal Procedure to be so inelastic as to compel the Court, under such circumstances as those set forth in the instructions, to refuse to set aside the verdict and order a new trial, in Mrs. Maybrick's case, upon the bare ground that it is a case of felony.

"Having regard to the provisions of the Judicature Act, 1873, and the Rules of the Supreme Court, I am of opinion, that the High Court has jurisdiction to entertain an application for a new trial of a case tried at the assizes, which are thereby constituted a Court of the High Court, inasmuch as there is now no necessity for having the case removed by *certiorari*, or otherwise, into the Queen's Bench previous to the making of such application. (See Regina v. Dudley, 14 Q. B., p. 280, and Mellor v. Royal Exchange Shipping Company, the *Times'* Reports, p. 663.)

"I am further of opinion that, in the event anticipated by my learned friends, of the Court refusing to follow the precedent of the Scaife case, an application should be made to the Court to follow the precedent of the Murphy case (L. R., 2 P. C., 535), where the record was allowed to be amended, and that the Court should be asked on Mrs. Maybrick's behalf to direct that an entry of the conduct of the Jury, and other irregularities mentioned in the instructions, be endorsed on the record, (See 2 Hale's Pleas of the Crown, 308, where Lord Hale says that an irregularity 'is to be, as it ought to be, endorsed on the record,') and that this application should be made for the purpose of putting such an error upon the record as would form a foundation for a writ of *venire de novo*.

"I am further of opinion that the advice given to the Queen by the Home Secretary as to exercising Her Majesty's prerogative on the ground that the evidence left a reasonable doubt whether his death was, in fact, caused by the administration of arsenic (which in this case is equivalent to a reasonable doubt whether murder had, in fact, been committed), and also the course taken in consequence of that advice, of applying to and obtaining from the Court an order under the provisions of 5 George IV., cap. 82, directing that Mrs. Maybrick be kept in penal servitude for life are unconstitutional, and that her imprisonment is consequently illegal; and, therefore, that an application can be properly made for a writ of *habeas corpus* with a view to obtain her discharge on the ground that she is illegally detained.

"In reference to the special question put by Messrs. Lumley and Lumley thus: 'Does the evidence disclose any sufficient grounds for the statement made by the Home Secretary in his advice to the Queen—Viz., the evidence leads clearly to the conclusion that the prisoner administered, and attempted to administer arsenic to her husband with intent to murder?' I can, after careful perusal of the evidence, find no sufficient ground for such a statement, which is, moreover, contradictory to the summing up of Mr. Justice Stephen, who pointed out (*e. g.*, p. 36). 'The theory is that there was poisoning by successive doses but I do not know that there was any effort made to point out the precise times at which such doses may have been administered.'

"A careful perusal of the evidence makes it clear to me that no such occasion of administration, or attempted administration, of arsenic by Mrs. Maybrick, whether with or without felonious intent, can be pointed out as would afford the Home Secretary any sufficient ground for the representation he made to the Queen; and further, that the only ground to be found in the entire proceedings for such a representation is what Mr. Justice Stephen described as 'the theory' of the prosecution as distinct from 'the evidence.'

(Signed) ALEXANDER W. MACDOUGALL."

"LINCOLN'S INN, April 12th, 1892."

Whatever may be thought or said by Counsel of the views of Mr. MacDougall by those skilled in English Criminal Procedure, and concerning which his associates, do not seem to have assented, these opinions do show that

this case would have been one in which an appeal would have resulted in a new trial in any State of the American Union and that "the certificate of reasonable doubt" required under American practice on an appeal in criminal procedure would have been granted by any impartial Judge.

✓ THE CASE OF SPURGEON YOUNG.

WAS HIS DEATH DUE TO INJURIES SUSTAINED WHILE IN
THE HYPNOTIC TRANCE, IN A CATALEPTIC STATE
IN THE HANDS OF IGNORANT AND UN-
TRAINED OPERATORS?

BY CLARK BELL, ESQ., VICE-CHAIRMAN AND SECRETARY
PSYCHOLOGICAL SECTION MEDICO-LEGAL SOCIETY.

The Coroner of Chautauqua County, A. H. Bowen, M. D., who is also Health Officer at Jamestown, New York, held an inquest with a jury, as to the cause of death of Spurgeon Young, a young colored lad, who recently died therein, January, 1897, under circumstances that led the authorities to regard it proper to investigate the cause of death, and how far it was due to, or traceable to his condition, as affected by the repeated placing of the lad in a Hypnotic state, by Hypnotizers who were not skilled in the matter, and in which, it was thought he had sustained physical injuries which might have incited the disease of which he died.

I was called upon by the Coroner to aid him in this investigation, and I requested him to have a careful and complete autopsy made by competent medical men, and the inquest was adjourned to enable me to furnish him with expert and opinion evidence bearing upon the questions he regarded as important to the inquiry he was conducting.

Read before the Psychological Section Medico-Legal Society, February 10, 1897.

Read before the Medico-Legal Society of New York, February 20, 1897.

He furnished me with such of the facts as had transpired, a resume of which are given in my letter enclosed and with a hypothetical question, which is subjoined.

I sent a letter of which the following is a copy and the hypothetical question to some of the more prominent experts, who are members of the Psychological Section of the Medico-Legal Society :

DEPARTMENT OF HEALTH,
A. H. BOWEN, M. D., HEALTH OFFICER,
Corner Second and Main Streets,

JAMESTOWN, N. Y., January 30th, 1897.

Hon. Clark Bell, Ex-President Medico-Legal Society, or other Medical Experts in Medical Jurisprudence, New York City, N. Y.

DEAR SIR:—Will you please reply to the following hypothetical question?

In case of a youth 17 years of age, of good physical development and medical history, well nourished, weighing about 125 pounds, upon autopsy, with no observable lesion, beyond slight cerebral softening, and trace of kidney deterioration, vital organs normal with cause of disease diagnosed as *diabetes-mellitis*; and it appearing upon conceded evidence that the deceased had for approximately over six months been a chronic "sensitive subject" of extreme susceptibility to hypnotic or "mesmeric influence;" having been protractedly and repeatedly hypnotized many times by amateurs and irresponsible and reckless youthful operators and dabblers in hypnotism; and while under the influence or in a state of statuvolence having been sat or stood on, by men of average or heavy weight, while in a cataleptic state, with head and feet supported, so that he formed a bridge between such supports; and having been thrown into and left in hypnotic or trancoidal states with instructions to emerge therefrom at a given time, and upon emerging apparently from such trancoidal state complaining of nervous chills, physical prostration and malaise; in your view and opinion, according to the best of your professional knowledge and belief, according to the best authorities and latest research wherewith you are familiar, in physiology, pathology and psychology—would physical injury or organic impairment particularly of the renal function, or symptoms of glycosuria, directly or indirectly, follow from the psychic or emotional disturbances or derangement of nerve function, involved in or due to, the morbid innervation incident to such hypnotic practice or experimentation in "mesmerism" or alleged animal magnetism?

Fraternally yours,

A. H. BOWEN, M. D.,
Coroner Chautauqua County.

MEDICO-LEGAL SOCIETY,
OFFICE OF THE SECRETRAY,
No. 39 Brordway,

NEW YORK, February 1, 1897.

My Dear Sir and Colleague:—I have received from the Coroner of

Chautauqua County, a hypothetical question, of which I enclose you a copy, to which he desires a reply from some of our medical experts, familiar with the subject of hypnotic suggestion. Briefly, the case, aside from the statement made in the hypothetical question, is; that this Coroner is now conducting an inquest at Jamestown, N. Y., upon the body of a young negro, named Spurgeon Young, which excites great public interest. Dr. C. J. Phillips and Dr. Wm. M. Bemus made the autopsy, and subsequently testified that substantially, the treatment to which the deceased had been subjected, while under hypnotic influence, had in their opinion, caused the disease, diabetes, which had caused death. The hypothetical question gives substantially the results of the autopsy, except that Dr. Phillips testified that he found no external bruises or internal lesions sufficient to cause death, except as stated in the hypothetical question; that sugar was found in the urine, which he stated, was the indication of diabetes, but that the tissues of the kidneys were not broken down. He further testified that diabetes was a kidney or nervous disease, that may be caused by strong nervous excitement or non-assimilation; and that he believed that the tax on the nervous system had a tendency to cause diabetes, and that acute and chronic diseases of the brain of a depressing character, such as might be caused by hypnotism, might produce the disease. He further testified, that hypnotism is sometimes used with beneficial effects in cases of hysteria and paralysis, but as it was commonly practiced, it was extremely dangerous, and that it was a severe strain upon the subject's nervous system. He also testified that the first stage of hypnotism might be refreshing, but the further stages might be dangerous. He was cross-examined as to whether a subject could be made to commit suicide or crime under suggestion, upon cases read from medical journals; and answered that the cases were unusual, but that he had no doubt of their truth, and was positive that hypnotism was a dangerous agency. It was claimed before the Coroner's jury by the District Attorney that hypnotism as practiced by amateurs was dangerous, alike to morals and lives of the subjects in certain cases.

I have been appealed to by this public official to aid him as a public officer in the investigation of the subject, by the opinion of scientific experts connected with this body in aid of the due administration of justice. The inquest is adjourned to to-morrow evening and will be further adjourned to hear my reply. I therefore ask that you forward to me at once your answer to the enclosed hypothetical question, taking into consideration also, as the basis of your decision, and opinion such facts as are contained herein, so that I may forward your reply to the Coroner.

Yours hastily,

CLARK BELL.

Thomson Jay Hudson, Esq., LL. D., of Washington, D. C., is the author of "The Law of Psychic Phenomena," one of the Vice-Chairman of the Psychological Section and is regarded as a high authority in the whole domain of suggestion. His reply was as follows:

WASHINGTON, D. C., February 2, 1897.

HON. CLARK BELL, PRESIDENT MEDICO-LEGAL SOCIETY, N. Y. CITY,

My Dear Colleague:—I have your favor of the 1st inst., enclosing a letter from the Coroner of Chatauqua County, N. Y., submitting a hypothetical question to you and your colleagues relative to the possible or probable effects of hypnotism in a case therein stated.

In reply I have to say: First that I cannot be considered a medical expert in the true sense of the term. I am a lawyer by profession and have given some attention in the course of my studies to the subject of Forensic Medicine; but not to an extent to entitle me to assume the rank of an expert. I have, however, devoted a large share of my time during the fifteen years past to the study of theoretical and experimental hypnotism and cognate psychical phenomena.

My experience and observation in this line of inquiry enables me to say definitely and without reference to age, physical development, medical history or pathological conditions that, given a case where "the deceased had for approximately over six months been a chronic sensitive subject of extreme susceptibility to hypnotic or mesmeric influence; having been protractedly and repeatedly hypnotized many times, by amateurs and irresponsible and reckless youthful operators, and dabblers in hypnotism and while under the state of stativoleness having been sat or stood on, by a man of average or heavy weight, while in a cataleptic state, with head and feet supported, so that he formed a bridge between such supports; and having been thrown into and left in hypnotic or trance-like states with instructions to emerge therefrom at a given time, and upon emerging therefrom such apparently trance-like state complaining of nervous chills, physical prostration and malaise;" in my opinion, there could be but one inevitable result, namely, a shattered nervous organism, leading eventually, if life is prolonged, to imbecility or insanity.

What physical ailments might result from an abdominal mental and nervous condition thus induced would depend largely upon the particular character of the treatment to which the victim was subjected at the hands of his persecutors, and upon which the letter before me, throws no light. I do not, however, undertake to speak from experience or personal observation on this branch of the subject. It is the province of medical experts to determine what particular physical disease may result from given nervous conditions.

I may remark, however, that from a somewhat extended course of reading of the works of medical experts of recognized ability and standing in the profession, I have been led to believe that there are few bodily diseases that may not be produced by abnormal mental and nervous conditions. "Who," asks Dr. Tuke, "will pretend to assert that any tissue of the body is beyond the range of nervous influence?"

I cannot within the limits of a letter give the *rationale* of my convictions relating to the disastrous effects upon the victims of unskilled and reckless hypnotic experiments. My views upon that subject may be found, however, in an article in the current number of the "Hypnotic Magazine" (Chicago) entitled "The Danger Lines of Hypnotism."

Sincerely yours,

THOMSON JAY HUDSON, LL. D.

Prof. W. Xavier Sudduth, late of the University of Minnesota, and now of Chicago, has been for some years a Professor of Psychology and an acknowledged authority, and Chairman of the Psychological Section, replied as follows:

CHICAGO, ILL., February 3rd, 1897.

CLARK BELL, ESQ.,

Dear Friend:—In answer to the hypothetical question in the case of the deceased negro, Spurgeon Young, would say that Hypnotic Suggestion or Suggestion given in the Hypnotic State, is a positive force and its practice in the hands of "amateurs, irresponsible persons and reckless youthful operators and dabblers," is fraught with grave dangers. Cases are on record where subjects in such hands have suffered some nervous shock resulting in serious derangement of the nervous system even from one or a few experiments, not from or by reason of the hypnotization or the introduction of the hypnotic state, but by reason of the emotional disturbance incident to such *experimentation*. A close distinction must be made between hypnosis, which is a restful state of somnolence that can have no bad effects, in and of itself, and the vicious suggestions and practices made to and upon the subject while in the hypnotic state. The bad effects of such suggestions are not alone confined to the hypnotic state, however, but are constantly being observed in the waking state in superstitious and susceptible individuals with equal or worse results than are ever to be observed in the hypnotic state, because with persons in the hypnotic state some degree of protection from shock is insured by reason of the general condition passively obtained during hypnosis, where hypnosis (sleep) alone is indicated, and the patient left alone he quickly passes from the hypnotic sleep, into an ordinary sleep, to awaken sooner or later refreshed by his experience. The nervous chills, physical prostration and malaise complained of in this case on awakening from the somnolent state, were due not to the state but to the suggestions and practices indulged in by those who had him under control and for which they should be held criminally liable. As to the possibility of inducing *Diabetes Mellitis* through emotional disturbance I am not so clear. In fact I am very doubtful whether such a condition could be thus brought about and should rather lean to the negative side of the question. Disturbance of the renal function is constantly in persons suffering from intense grief and melancholia. Many cases of so-called Bright's disease, are the result of prolonged nervous strain and this may have been such a case, but on this point I should rather be excused from answering positively except on more information than is given in the question that is forwarded me for answer. If such were the case, however, I should not attribute it to hypnotism but to the vicious practices and suggestions indulged in while the subject was under hypnosis. In conclusion, I should like to say, that the practice of hypnosis by the laity, is to be deprecated in all instances and that laws should be passed by the legislatures of the several States conferring its use, not to physicians alone, but to

those physicians who by study and scientific research have mastered the scientific application of this new old force.

Respectfully submitted,

W. X. SUDDUTH.

Irving C. Rosse, M. D., is one of the prominent alienists of the Society, a physician of high attainments in mental and nervous diseases, one of the officers of the Medico-Legal Congress, who has made careful studies of Suggestion in the Hypnotic state. His reply is as follows:

WASHINGTON, D. C., February 3rd, 1897.

Dear Mr. Bell:—In answer to the hypothetical question submitted, I should say that, in my view and opinion, the glycosuria is in no way related to the morbid innervation brought about by hypnotic practice.

Glycosuria is extremely rare among negroes. Of many hundred I have examined for alleged kidney disease, sugar in the urine was found in but one instance, that of a messenger in the U. S. Treasury Department.

Diabetes of traumatic origin and the association of this disease with nerve changes are familiar pathological facts. The neurosis known as major hypnotism is also a pathological state, since animals become demented after frequent subjection to hypnotic influence, and the best authorities are that vascular changes in the brain with breaking down of nerve tissue associate themselves with hypnotism. Moreover, hypnotized subjects are observed to show exaltation of the special senses; over excitability of the muscular system, and diminished reflexes.

The injurious tendency of hypnotic practice to exhaust nervous force and weaken the will is spoken of by some authorities as a kind of moral masturbation that should be prohibited or restricted by legal enactment.

The fact of the decedent having been a subject of extreme susceptibility to hypnotic influence affords sufficient ground for the inference that he was also neurotic, and his nervousism was aggravated and increased by the existing renal impairment or glycosuria, which was not due or incident to alleged hypnotic or mesmeric experiment.

Yours truly,

IRVING C. ROSSE.

T. D. Crothers, M. D., is a physician of high character and standing, Superintendent of Walnut Lodge, Hartford, Conn., a retreat for the care of Inebriates and victims of the opium habit, one of the Vice-Presidents of the recent Medico-Legal Congress held in this city and one of the Vice-Chairmen of the Psychological Section. He has made a special study of Hypnotic Suggestion, and is a high authority. He says:

HARTFORD, Conn., February 4th, 1897.

My Dear Mr. Bell:—The hypothetical question presented by Mr. Bowen, Coroner of Chautauqua County, N. Y., contains no facts from which any conclusions should be drawn that hypnotism was in any way an exciting or contributing cause of death.

There are no authentic facts on record to support the assumption, that hypnotic conditions including catalepsy, trance and repeated hypnosis are followed by organic disease of any kind. Least of all organic impairment of the kidney or its glycosuric function. It is possible that certain degeneration of the nerve centers may be increased by repeated hypnosis, but at present there are no facts to prove this. In this hypothetical question there could be no connection between *renal* derangement and extreme sensitiveness to hypnotic suggestion. One could and would not follow the other. There is no evidence so far, to prove hypnosis pathological.

The symptoms of debility following such states are not the result to be attributed to it; the derangement of the kidneys is a chemical and organic one, in diabetes, and not from psychic influences from objective sources.

This question offers no reliable suggestions along the line of observed facts up to the present; or indicates any reasonable possibility of the relation of cause and effect in this case.

Very truly yours,

T. D. CROTHERS, Supt.

Henry Hulst, M. D., of Grand Rapids, Michigan, is one of the Vice-Chairmen of the Psychological Section, a physician who has made an especial study of Hypnotic Suggestion, under the best foreign masters, and who has carried on a successful clinic for some years in Grand Rapids, devoted to treatment of all forms of mental and nervous diseases. He was one of the officers of the Medico-Legal Congress held in Chicago in 1893, and is in the front rank of American experts of the therapeutic value of Hypnosis in disease. He says:

GRAND RAPIDS, Mich., February 3rd, 1897.

Dear Mr. Bell:—I received your letter with the hypothetical question and I will try to formulate my opinion at once.

Given an extremely sensitive subject of extremely susceptibility to hypnotic or mesmeric influence protractedly and repeatedly hypnotized by amateurs and irresponsible persons, being stood upon and sat upon, etc., subsequent malaise and physical prostration on the part of the subject is not to be wondered at, especially as such amateurs and irresponsible youthful operators can scarcely be expected to know enough to prevent or remove such disagreeable after-effects.

As to whether symptoms of glycosuria directly or indirectly follow

from psychic or emotional disturbance or derangement of nerve function involved in or due to the morbid innervation incident to such hypnotic practice or experimentation in "mesmerism" or alleged "animal magnetism," I must say that so far as I know, no case of that kind occurs in literature.

The etiology of *Diabetes Mellitis*, is still very obscure. It is produced artificially in animals by irritating a particular spot in the Medulla. Beyond that but little is known positively. Osler says that "mental shock, severe nervous strain and worry precede many cases." He uses the word "precede" not "cause." Our knowledge of the disease is too obscure to warrant us in concluding that any given antecedent severe nervous strain and worry is the *cause* in a given case.

The question whether even the abuse of hypnotism can cause diabetes, it seems to me, ought to be answered in the light of the foregoing.

To attribute the diabetes to the use or abuse of hypnotism in the case in hand, would be, therefore, a mere speculation, and not an opinion based upon scientific observation, cannot be determined from the facts set forth in the hypothetical question.

Hoping my opinion may be of value, I remain,

Yours truly,

HENRY HULST.

Henry S. Drayton, M. D., of New York is a New York physician who has for years made a study of Hypnotism and is thoroughly familiar with its value and use in medical treatment. He is one of the editors of the Phrenological Journal, a careful student of and writer upon these subjects and an authority. He says:

27 East 21st Street,
February 3rd, 1897.

CLARK BELL, ESQ., SECRETARY MEDICO-LEGAL SOCIETY,

My Dear Sir:—Your favor, with inclosed hypothetical question is at hand this p. m. Just at this time I can but give my opinion briefly with regard to the interests involved. Assuming the premises as stated by Dr. Bowen I have no doubt that the hypnotic treatment so practiced by "amateurs and irresponsible and reckless youthful operators dabblers in hypnotism" was perilous to such a "sensitive" in both physical and mental side. The very fact of a neuratic dyscrasia would itself render me exceedingly careful in employing the hypnotic method should a patient so constituted be brought to me for treatment. The old "mesmerists" were pronounced in opinion against the experiments of careless and ignorant persons, deeming them of a dangerous nature, and the more experienced of modern hypnotists are quite in agreement that much injury may be done by unlearned and unskillful persons, who attempt experiments in hypnotic suggestion. As for those who perform in this wise in public, for the sake of gain and notoriety, there is little doubt that their extravagant and senseless operations may be productive

of much harm to the weaker subjects of their manipulation. Regretting lack of time for a better expression of my opinion, I am,

Yours sincerely,

H. S. DRAYTON.

James R. Cocke, M. D., of Boston, Mass., is a physician who has devoted much time and attention to this subject. He is one of the Vice-Chairmen of the Psychological Section, and a member of its Standing Committee on Hypnotism. He is the author of the work "Hypnotism, its uses and abuses," and is an authority of great personal experience. He says:

224 MARLBOROUGH ST., BOSTON, February 3, 1897.

MR. CLARK BELL, NEW YORK, N. Y.,

Dear Sir:—Concerning the Coroner's questions, let me say briefly, again, that I can readily understand how a person of exceedingly nervous, sensitive temperament, could be so wrought upon as to induce an active hyperæmia in the *medulla oblongata*, whereas you know in the floor of the fourth ventricle are centers which when disturbed unduly by chemical or other influences, produce a glycosuria which might become permanent if inflammation succeeded to the state of active hyperæmia. However, I have hypnotized thirteen diabetics. Besides *diabetes mellitis* these patients suffered from severe secondary dermatoses, and in one case the patient suffered severely from dermititis herpetiformis. In all these thirteen cases I succeeded in relieving the pain, dyspnœa, and to a certain extent the polydipsia and bulimia. The hypnotism did not seem to exercise any inhibitory influence over the excessive glycogenic formation. However, of course, have never been and never will be subjected to those ridiculous and criminal performances which have rendered the name of hypnotism odious in so many places.

I use hypnotism as a sedative and in these cases find that it makes no difference whatever in the amount of solids excreted by the kidneys. The revolving mirror and other exciting agencies of the kind will produce temporary albuminuria with subsequently a very fatal disease in the young. It is, of course, attributed, as you know, first, to disease of the *madulla oblongata*; secondly, to disease of the pancreas. The result of the post mortem sent by you is so incomplete as to make a decision of the individual case impossible. I believe, however, that the so-called hypnotic subject was a hysterical subject and that the excessive states of nervous excitation could have been hastened, perhaps precipitated *diabetes mellitis*, granting that there was a peculiar vulnerability either of the centers of the *madulla* or the tissue and other nervous mechanism of the pancreas. *Diabetes mellitis* in the young, in my experience, is an aggravated form of disease. The polydipsia and bulimia cause such intense suffering as to make it impossible for a subject to endure long the hypnotic experiments described. There is a form of intermittent glycosuria which has no etiological basis, so far as we can discover.

Diabetes mellitus is not necessarily attended with renal degeneration although a secondary nephritis of the parenchymatous type is often seen in cases of long standing. In the young renal degeneration is seldom extensive. These conclusions are the result of forty-one post mortems made by me and also based upon the authority of Keating's Encyclopedia, "Diseases of Children"

Yours sincerely,

JAMES R. COCKE.

Prof. C. H. Hughes is President and Professor of Psychiatry and Neurology, Barnes' Medical College, St. Louis, Mo., Editor Alienist and Neurologist, Honorary Member British Psychological Association, Corresponding Member Medico-Legal Society, one of the officers of the Medico-Legal Congress, member of the American Medico Psychological Association, and a very high authority, and says in response to the hypothetical question :

ST. LOUIS, MO., February 3rd, 1897.

Dear Sir and Colleague. :—Extensive observation of the hypnotic state and of the effect of repeated and long maintained hypnotism on the same subjects, has convinced me of the deleterious effect of the often-repeated and long continued hypnotic state on the nervous system of its subjects, especially its damaging effect on the inhibitory centres of the brain which regulate the normal volitions and the natural spontaneity of the mental operations of the individual. The repeatedly and continuously hypnotized subject becomes a more or less changed man as compared with his normal state and, to this extent, is in an insane state of mind with this difference from the ordinarily insane person, that his change of mental character is chiefly subject to the directing influence of another person rather than to his own perverted and abnormal volition, as in the case with the ordinary insane person. But he may become as insane and diseased in brain as an ordinary lunatic,

In the case above submitted, I think it not at all improbable that the brain in the region of the fourth ventricle, which contains the diabetic centre of the brain, was damaged by the repeated hypnotisms, and that the diabetes itself resulted therefrom, as puncture of the floor of the 4th ventricle causes, in animals, the phenomenon of diabetes of glycosuria, and it is often also the result of physical overstrain. Because of this experimental psychological fact of a diabetic centre in the brain, diabetes and vase-motor effects and blood congestions are not unlikely to result from hypnotic experimentation too long maintained or too often made

Physical injuries, also, doubtless resulted to kidneys and abdominal viscera from the violent usage of subjects while in the hypnotic trance state, especially while in the condition of a cataleptic rigidity, stretched from chair to chair, resting in opisthotonos attitude with head and feet, with persons walking on his abdomen, or sitting on him, or pounding him, or putting weight on him.

There are other causes of diabetes, however, such as excessive feeding, with sedentary habits and discontent, melancholia, etc., in plethoric, inactive persons. I could not answer this question definitely without knowing whether they were pre-existent causes of the slight brain softening and trace of kidney deterioration.

Yours very truly,

CHARLES H. HUGHES, M. D.

Prof. Thos. Bassett Keyes of Chicago, has devoted much study to this subject and has a large experience in Hypnotic Suggestion. He says:

NO. 100 STATE STREET,
CHICAGO, Ill., February 3rd, 1896.

To the Hon. Clark Bell of New York City:—Yours of February 1st in regard to the hypothetical question, as to whether diabetes mellitis, as in the case referred to by Spurgeon Young, might result from improper handling, suggestions and impressions under hypnotism, is at hand and briefly considered.

From what we know of the psychological action of suggestion, after hypnotism, it leads me to say that, since blisters have been drawn, hemorrhages made to appear or stop, sores to heal, inflammations and swellings to disappear, glands and organs to become active or slow, according to the suggestions; since the tissues in every part of the body may be influenced—and from what we know of the etiology of diabetes mellitis, viz.: that it is sometimes the result of irritation of the vasso-motor areas of the floor of the fourth ventricle and since this irritation may result from shock, mental labor, and strong excitement, and emotion, it leads me to say that if improper suggestions were made to a hypnotized subject—such as suggestion to cause excessive fear or shock, or any but properly directed psychological suggestions would have a deteriorating or abnormal stimulating influence upon the body and nervous system generally and such shock deterioration or abnormal stimulation might produce, it seems very probable, the disease—*Diabetes Mellitis*, or if the subject was improperly handled (the suggestions being also considered) a local or central hyperemia of the floor of the fourth ventricle might be produced. "Mechanical irritation of this region produces glycosuria," (Loomis.)

Other questions might be considered, as the stimulation of certain ganglia as to produce excessive activity and assimilative processes.

Sincerely yours,

THOS. BASSETT KEYES.

Prof. of Suggestive Therapeutics Harvey
Medical College, Chicago.

Dr. Wingate is one of the Vice-Chairmen of this Section and a high authority:

STATE BOARD OF HEALTH OF WISCONSIN,
EXECUTIVE OFFICE.

MILWAUKEE, WIS., February 3rd, 1897.

CLARK BELL, ESQ., 39 BROADWAY, NEW YORK,

Dear Sir and Colleague:—Yours of the 1st inst. received and contents

noted. I enclose herewith a copy of the hypothetical question which you submit to me for reply, and will answer it as follows:

I do not believe diabetes mellitis would follow such treatment, but given a case where diabetes mellitis existed, I believe such hypnotic practice as related in the question would be decidedly injurious.

Faithfully yours,

U. O. B. WINGATE, M. D., M. M. S. S.
Prof. Disease of the Nervous System and Hygiene
Wisconsin College of Physicians and Surgeons.

Mr. Sydney Flower is the Editor of the Hypnotic Magazine of Chicago, and devotes all his studies to this subject. He says:

February 3rd, 1897.

HON. CLARK BELL, ESQ., PRESIDENT MEDICO-LEGAL SOCIETY, AND
EDITOR MEDICO-LEGAL JOURNAL, NEW YORK CITY,

My Dear Colleague:—The Coroner's question may be condensed, may it not? into "Do hypnotic experiments, performed with a subject who is in the cataleptic state, produce physical injury or organic impairment in that subject?" I should think it most unlikely, and cite in defense of this position two significant facts, namely: 1. That there are no instances on record of injury having resulted to anyone by such practice; and 2. That in the case of a greater weight being placed upon a cataleptic subject's body than he is able to support, he will bend beneath it. In other words, catalepsy is a stiffening of the muscles of the body, by voluntary effort, under the suggestion of the operator; although, occasionally, the same state may be induced by the auto-suggestion of the subject. Only a small percentage of hypnotic subjects become good cataleptics, and this important fact was emphasized by Dr Parkyn, Superintendent of the Chicago School of Psychology, when I submitted to him the Coroner's question. The point he makes in this connection is, that few people have a natural aptitude for these experiments; and that, though one subject may be, while under suggestion, capable of making his body rigid; another may fail utterly. Also, that while one may stiffen certain muscles of his body, he may not be able to stiffen all; and, lastly, that the boy who can, while in hypnosis, sustain a weight upon his stomach, when suspended between two chairs, can also perform the same feat while in the waking condition, and that the catalepsy is largely dependent upon his habit of life, muscular formation, and training, or practice in those experiments. Seeing, then, that a subject, who has not in himself the muscular power necessary to support a weight, will not do so, but will bend under it, and that a cataleptic subject will come out of the cataleptic condition, and his muscles naturally relax, when limit of his endurance in this direction is reached, it becomes evident that a cataleptic rigidity is by no means the formidable condition it is commonly represented to be. As I am not a doctor of medicine, it would be presumptuous in me to comment upon the finding that this boy, Spurgeon Young, died of diabetes, supposed to be induced by his performances, while in a hypnotic condition. But I wish to know if diabetes manifests itself with the rapidity here indicated; and if it has ever been shown that a pressure on the abdomen results in a strain of the kidneys.

As to the responsibility in the case, it seems to me that no authority upon hypnotism will deny that boy was conscious of the fact that these experiments were to be tried upon him. He was not a persecuted infant, compelled by a stronger will than his own to perform muscular feats which were liable to injure him. He was in the position of an athlete, who is willing, for applause, or for gain, to test his strength in a certain manner. I do not think he injured himself by the performance of these feats, but admitting, for argument's sake, that he did, where lies the blame? He need not have consented to anything of the kind, but he voluntarily, and of his own free will, knowing well what he was expected to do, undertook to perform these experiments.

I have always denounced somnambulistic performances, which had no scientific aim, as foolish and dangerous. They are foolish, because when it is clearly understood that the subject is a conscious agent, they can have no special interest as experiments, but depend, for their attraction, upon the mystery which is ignorantly impressed upon the spectators by the uninformed operator. They are dangerous only because of the want of knowledge of the operator in properly removing all suggested delusions; but even here we can only assume a danger to exist. There have been no instances of evil effects resulting from even a careless use of hypnotism, and it is only by inferential reasoning that the best writers define the dangers of hypnotism. I think that both the experienced and the unexperienced operators are prone to magnify both the dangers and benefits of hypnotic suggestion.

With reference, finally, to these experiments, I should place cataleptic exhibitions in the "foolish" class, and sense delusions in the "dangerous"

I am, my dear sir, cordially yours,

Editor *Hypnotic Magazine*.

SYDNEY FLOWER,
56 5TH AVE., CHICAGO.

Dr. Laidlaw has devoted considerable study to the value of Hypnosis as a therapeutic remedy in disease. He says:

NEW YORK, February 3rd, 1897

CLARK BELL, ESQ.,

Dear Sir:—In response to the hypothetical question submitted by Coroner Bowen of Chautauqua County, N. Y., in his letter of January 30, 1897, I send you my view of the case, as follows:

From the account of the autopsy given, it is my opinion that diabetes mellitus was the probable cause of death. It is my further opinion that the frequent practice of hypnotic experiments had no relation whatever to the diabetes. In my opinion, it is not possible to produce diabetes mellitus by the practice of hypnotism, nor, if the disease is already present, will it be aggravated by hypnotic experiments any further than is involved in the general proposition that, in any diseased condition, all exertions that exhaust the patient, render him more susceptible to the inroads of his disease.

Signed,

GEO. FRED. LAIDLAW, M. D.,
Lecturer on Pathology in the N. Y. Homeo-
pathic Medical College, Pathologist to the
Hahnemann Hospital of N. Y., etc.

Dr. James T. Searcey is one of the Vice-Chairmen of the Psychological Section, of large experience, great learning and an authority. He says :

TUSCALOOSA, ALA., February 3, 1897.

HON. CLARK BELL, NEW YORK,

My Dear Sir:—In reply to the hypothetical question of Dr. A. H. Bowen, of 30th January:

I think it a very plausible opinion that the disease of *diabetes mellitus*, of which, or with symptoms of which, the young man under consideration was said to have died, could have been occasioned, or could have been aggravated to a fatal termination, by the continued and excessive hypnotism to which he was subjected during the six months prior to his death. Hypnotism is always a strain, and often a serious danger to the brain, particularly if carried to excess, or repeated for months, in a case evidently of weak cerebral ability, as this one seems to have been. In my opinion, sensitiveness to hypnotic suggestion is always an indication of cerebral (cortical) weakness or abnormality. In that particular, and in that way, the person is weak.

Diabetes is much more a disease of the brain, or of high nerve structure than of either the liver, which produces the sugar, or of the kidneys, which eliminate it. The frequent and severe strains, to which, not only the brain of the young man was subjected, but also his whole system, could have occasioned a disease of brain structure, which was the first cause of the diabetes, or have very much aggravated it, if, by heredity, or by any other cause, it had already begun.

This answer is given within the limits of the hypothetical question propounded by Dr. Bowen, and does not take into consideration other injuries to internal organs, which your letter refers to, and also supposes the cause of death to have been only the diabetes. The cerebral "softening" mentioned may be the pathological condition of which he died, or may have been the pathological source of the diabetes.

If the diabetes was of sufficient degree, or of sufficient long standing, to have been the cause of death, you could, with great plausability, advocate that it had been occasioned in a subject inclined to it, and had been aggravated, after it was begun, by the hypnotism he was subjected to, though there is no positive or direct proof, pathological or otherwise, connecting the hypnotism with the diabetes.

Very truly

J. T. SEARCEY, M. D.

Superintendent Alabama Bryce Insane
Hospital.

Prof. A. A. D'Ancona is a careful student of Psychology and Chairman of the Standing Committee on Psycho-Therapeutics of the Psychological Section. I regard him as a high authority. He says:

SAN FRANCISCO, CAL.,
606 Sutter St , February 4, 1897.

CLARK BELL, ESQ., SECRETARY MEDICO-LEGAL SOCIETY, N. Y.,

Dear Sir:—Your favor requesting answer to hypothetical question asked by the Health Officer of Jamestown, N. Y., is at hand.

It seems to me that the doctors who conducted the autopsy are under a misapprehension regarding the pathology of diabetes. The kidneys are not the seat of the trouble. They simply eliminate sugar from the blood when it is in quantity too great for the needs of the system or in a form not assimilable by the tissues. The doctors should have examined particularly the liver and pancreas.

Furthermore, diabetes cannot be predicted on account of the presence of one symptom, namely, glycosuria. This symptom often comes from mere excess of sugars and starches in the food. So well recognized is this that the large life insurance companies instruct their examiners not to reject applicants on account of glycosuria, unless associated with the rational signs of diabetes. That it was not so associated is probable, first, because the hypothetical question is silent upon the subject of the rational signs; and secondly, because one of the most marked symptoms of diabetes is progressive emaciation in spite of a voracious appetite, and the subject in this case is described as "well-nourished."

Though the causation of diabetes is obscure, many cases have been considered to be due to nervous shock, emotion, anxiety; many to injury and disease of the nervous system, to severe mental and physical strain, to blows upon the abdomen, etc., etc.

It is certainly possible that the experiments outlined in the hypothetical question overtaxed the physical and mental powers of the subject. This combined with the supporting of heavy weights upon the abdominal walls may have produced profound functional changes in the abdominal viscera, diabetes being one of the effects.

It is nevertheless, true, that for the majority of cases of diabetes no cause can be assigned. Owing to the uncertainty of the etiology of the disease, to attribute positively the cause of death to diabetes induced by functional nervous disturbance of the abdominal organs, the result of hypnotic experiments, however unskillful, seems to me unwarranted.

Very respectfully yours,

A. A. D'ANCONA, M. D.

This hypothetical question and my accompanying letter have been sent to other experts of position and eminence connected with the Medico-Legal Society and the Psychological Section whose replies are not yet received.

I did not formulate my own opinion upon the case, preferring to wait until I could have the autopsy, which, in my opinion, should throw all necessary light upon the question propounded by the Coroner.

The case presents some interesting questions and will,

I do not doubt, excite interest among students of the science on both sides of the Atlantic.

I sent the question to Prof. R. Virchow of Berlin, one of our Honorary members and other eminent members abroad and the case will serve to call attention to a new field of inquiry upon this interesting subject.

NOTE 1.—The following additional information was furnished by the Coroner after the verdict.

The autopsy was as follows, though it was not furnished to any of the experts who replied to the hypothetical question:

Examination of body of J. W. Spurgeon Young at the home of his father, 1033 North Main Street.

Height, 5 feet 7 inches. Age, 17 years. Weight, (estimated) 125 lbs.

Drs. W. M. Bemus, Phillips and Rice present, also Coroner Dr. Bowen. Drs. W. M. Bemus and Phillips operating.

Rigor mortis well marked. Body fairly well nourished.

1. Examination of brain. Incision from ear to ear through scalp, and tissues dissected and scalp reflected forward and back. (4 oz. urine drawn by catheter). Coroner went away at 1 p. m. Cranium removed. Brain removed. Dura mater, normal. Pia mater and arachnoid, normal; some small tubercles upon both sides of longitudinal fissure of cerebrum. Brain slightly softened on left side of cerebrum. White and gray matter, normal. Weight, 48 oz.

2. Chest opened. Lungs, normal. Oesophagus and trachea, normal. Heart, pericardium, normal. Heart, normal. Weight, 8 oz. Valves all normal. Diaphragm, normal. Liver, weight $3\frac{1}{2}$ lbs., normal in appearance. Bowels contained scybala. Stomach, normal but distended with gas. Pancreas small, but normal. Kidneys, left, hardened, small; right, hardened, small. with small tubercles in tubules of kidney. Spleen, small, dark, soft. Spine, normal; no evidence of external injury.

3. Urine. Reaction, slightly acid. Sp. gr. 1.020. Phosphates present. No albumen. Sugar in large amount.

WILLIAM. M. BEMUS.

C. J. PHILLIPS.

A. B. RICE.

The evidence of the attending physician, A. B. Rice, M. D., was:

That he treated Young from January 14, 1897, to the time of his death, on the 20th of January, he was confined to his bed and passed very large quantities of urine, three or four gallons per day.

On analysis the urine was found to contain large quantities of sugar. Dr. Rice diagnosed the disease as Diabetes Mellitis. Young complained

of pain in his back, was very weak, had an inordinate thirst, voracious appetite, observed daily loss of strength, but kept his mental faculties, though at times he would lapse into a stupor.

Dr. J. D. Buck, Professor of Principles and Practice and Mental and Nervous Diseases, Putte Medical College, of Cincinnati, replied to the hypothetical question as follows:

In my opinion grave physical injury would arise from the foregoing procedure: first, impairment of the nervous system, and finally imbecility. See reports of experiments of schools of Paris, Norway and others. Cerebral softening and diabetes might result from repeated hypnosis. The practice is harmful under all circumstances except in the hands of skillful physicians for the treatment of disease, and even then in a narrow range of diseases and with doubtful results. In all other cases it is dangerous and should be suppressed by law and with severe penalties.

The verdict of the jury was as follows:

We find that J. W. Spurgeon Young came to his death at 1033 North Main street in the city of Jamestown, in said county, on the 24 th day of January, 1897, from diabetes and nervous exhaustion caused by hypnotic practices performed by the following persons as shown by the evidence; R. Louenstein, Daniel H. Grandin, Parke H. Davis, Charles Wood, Edward P. Dodge, Robert Benius; and from the testimony produced before us upon the said inquest it appears that the said J. W. Spurgeon Young for several months prior to his death had been habitually and continually hypnotized by the above-mentioned persons and that while under the hypnotic influence, his body was suspended between two chairs, the back of his head resting on one chair and his feet upon another without other support and that while so suspended a person weighing at least 180 pounds sat upon him; that he had also while under such hypnotic influence been carried through the various stages of intoxication and delirium tremens and other hypnotic feats.

We would recommend that the state legislature pass a law prohibiting the practice of hypnotism.

I was unwilling to give an opinion on the hypothetical question alone, and did not receive the autopsy or the statement of Dr. A. B. Rice, the attending physician, until after the verdict was rendered.

WHAT ACTION SHOULD BE TAKEN REGARDING TRIAL TESTS AND EXPERIMENTS IN HYPNOTIC SUGGESTION, AND HOW SHOULD TEST EXPERIMENTS BE MADE.

BY CLARK BELL, ESQ., VICE-CHAIRMAN OF PSYCHOLOGICAL SECTION
MEDICO-LEGAL SOCIETY.

At the January meeting of the Psychological Section of the Medico-Legal Society experiments were made by Dr. Carleton Simon and Mr. Wines of Brooklyn, on several subjects, at which session I presided, and when each subject was hypnotized I named a committee of five physicians to carefully examine the subjects, to report whenever they were in the hypnotic trance. Tests were made of various kinds, including touching the cornea with the finger and the subjects were declared by the committee in each case in the true hypnotic trance in all cases. Dr. G. Bettini di Moise with Dr. H. W. Mitchell were named on the subjects, introduced by Dr. Carleton Simon, the latter declined to serve, but Dr. di Moise served and while he did not report to me that he dissented from the other members of the committee, he did state to me that he found sensitiveness and sensation in one of the cases, but said that he had touched the cornea of the eye with one finger without response, and used ammonia at the nostrils without apparent effect; but he said that he thought the ammonia was not strong. The other physicians were unanimous in pronouncing the subjects fully hypnotized. Dr. Mary R. Brinkman, Dr. Wm. R. Gardner, Dr. Dewing, of Westchester, N. Y.; Dr. Agnes Sparks, of Brooklyn and Dr. G. Bettini di Moise acted on the committee of physicians.

In the published accounts, Dr. di Moise was quoted by the New York Journal as doubting that the subjects were in the true hypnotic trance, and the subjoined correspondence passed in the New York Journal of January 15, 1897, and in the Hypnotic Magazine for February, 1897.

This correspondence was furnished me by Dr. G. Bettini di Moise and was as follows:

FROM DR. CARLETON SIMON,
114 East Fifty-sixth Street, New York.

To G. Bettini di Moise, 42 West 25th Street, New York.

DEAR SIR:—I notice your severe criticism of my hypnotic experiments, at your residence January 5, in the Evening Journal of January 6.

It would give me great pleasure to have you call at my office, when I may be able to show you conclusively that each and every one of my subjects were hypnotized, and demonstrate before you, and any other scientific gentlemen you may select, my veracity in this matter and your unreasonable attack.

And I furthermore agree that in the event of my subjects not being genuinely hypnotized I am willing to pay one thousand dollars (\$1,000) to any charitable institution the Medico-Legal Society may select. Believe me, sir,

January 7, 1897.

Very truly yours,
CARLETON SIMON.

OFFICE OF G. BETTINI DI MOISE, M. D.,

No. 42 West Twenty-fifth Street, New York, January 11, 1897.

To Dr. Carleton Simon, 114 East Fifty-sixth Street, New York City.

MY DEAR DOCTOR:—Yours of the 7th January inst. is at hand, taking exceptions to my criticism of the experiments made before the Psychological Section of the Medico-Legal Society, on January 5, 1897, as published in the New York Journal of January 6th inst. You fall into the error of assuming that because I doubt that your subjects were in the true hypnotic trance that I question either your sincerity or veracity. If you are correct then no member of the Psychological Section could question any of your experiments without making a personal accusation against your integrity.

The highest authorities advise all beginners who take up hypnotism that their greatest danger lies in being self-deceived by their subjects. You seem to have either forgotten or ignored this established law.

I accept your challenge with slight conditions or modifications, which I trust will meet your approval.

It is of no consequence that you satisfy me, but it is of great importance that you establish your proposition before the Psychological Section, where the experiments in question were made.

I therefore hope you will modify your proposal so that the test or trial be made before a select commission of scientists to be named by the vice-chairman of the Psychological Section, Mr. Clark Bell, of at least ten persons.

It is only fair that you should be represented on that commission by at least two names, and I suggest that you furnish Clark Bell, vice-chairman, a list of names from which he may select at least two to act on that commission.

That the trials be made before that commission under the chairmanship of the vice-chairman of the Section, Mr. Bell; that a majority of that commission decide the matter, and that their decision shall be accepted as final and conclusive as between you and me.

I also suggest that in case of your failing to satisfy that commission that your subjects are not genuinely hypnotized, that the \$1,000 be paid either to the library fund of the Medico-Legal Society, or, what would be still better, into the treasury of the Psychological Section, to be devoted to the expenses of pursuing its investigations.

Hoping to satisfy you of the truth of the conclusions which I reached on witnessing the experiments given before the Section on January 5, as published in the Journal, I remain, dear sir,

Yours very sincerely,
G. BETTINI DI MOISE.

FROM DR. CARLETON SIMON,

114 East Fifty-sixth Street, New York.

To Dr. Bettini di Moise, New York.

MY DEAR DOCTOR:—I accept with great pleasure your proposed modifications, and I trust that it may result in benefit to your own knowledge of the subject and be of service to the medical profession.

I recognize the truth of what you say. Your opinion, or the opinion of any one individual as to the truth of hypnosis, is of no particular importance, but the verdict of a commission thus organized by the Medico-Legal Society would be of great importance.

I suggest that Mr. Clark Bell, as chairman of the Section, be authorized to determine all details of the test trial and that if I am unable to

procure all the subjects introduced by me on January 5, that I may be allowed to make a test trial with one or more subjects under such conditions as Mr. Clark Bell, as chairman of the commission, may fix, without regard to the experiments made on the 5th January inst.

I trust that I may convince you, the society and a skeptical public through this commission—"the first of its kind in America"—that hypnosis is true, that it exists, and has been demonstrated by myself before you in the past. Believe me, sir,

January 13, 1897.

Very truly,

CARLETON SIMON.

I addressed a letter to some of the prominent officers of the Section for advice as to my duty in the premises, and received some replies, viz:

OFFICE OF THE VICE-CHAIRMAN AND SECRETARY,

No. 39 Broadway, New York, January 25th, 1897.

MY DEAR SIR AND COLLEAGUE:—I enclose a clipping from the New York Journal of January 15th inst., which please read and return, it explains the situation.* Dr. Simon has at once accepted the modifications of Dr. di Moise and the question is now before the Section as to what should be its attitude regarding this controversy.

First: Should I name such a commission for this purpose?

Second: Should the test be made before the whole Section or privately?

Third: Should the press be allowed to be present? What is your advice upon the subject and would you be willing to act as a member of such a commission? Before any actual steps in the matter I wish to have an expression from the officers of the Section regarding it. I am in doubt upon the following propositions:

1. Would such an inquiry, action and test be of any value to the Section?

2. Would it in any way throw any light upon our studies of the science?

3. Conceding as we must that the great proportion of those who make public exhibitions of hypnosis are nothing but frauds and impostors, how would the Section be benefited by an inquiry, the practical result of which would be to decide whether or not Dr. Simon was one of the former or not. For example, if the commission found that Dr. Simon's subjects were in true hypnotic trance or the contrary, what good effect to either the science or the Section could result?

4. Is it not rather a personal controversy between Dr. Simon and his critics? It would be a simple matter to designate a commission before whom Dr. Simon could reproduce his experiments in a private way and let that commission determine the question. On the other hand, so great is the public interest in the controversy which has already attained considerable publicity, that a great pressure is brought to bear upon me by persons outside the Section and the press, to have the test made in the presence of a large audience. Please advise me what you think of the whole subject and what you advise. Our Vice-Chairmen are too widely scattered to call them together.

Very faithfully yours,

CLARK BELL.

Mr. Thomson Jay Hudson writes:

WASHINGTON, D. C., January 26th, 1897.

Clark Bell, Esq., 39 Broadway, New York City.

DEAR MR. BELL:—I have your favor of the 26th inst., in which you ask my opinion regarding the desirability of appointing a commission to settle a dispute between Dr. Simon and Dr. di Moise as to whether certain alleged hypnotic subjects of Dr. Simon were in a state of hypnotic trance when recently exhibited before the Psychological Section of the Medico-Legal Society; and in reply I have to say:

*NOTE.—The Journal contained copies of the correspondence between Dr. Carleton Simon and Dr. G. Bettini di Moise.

Not having a full statement of the controversy before me, I am not in a position to give advice understandingly. But from what I can gather from your letter I must say that I cannot see just how a commission subsequently appointed can determine the question as to whether Dr. Simon's subjects were in a true hypnotic trance on the occasion referred to. Neither success nor failure could possibly prove anything connected with a prior event. A complete success might justify the inference that the prior event was a success; but it would not be demonstrative of that fact. On the other hand, a complete failure would not be demonstrative that he failed on a prior occasion; for success in hypnotism depends upon conditions that cannot always be commanded. My views on the effect of adverse suggestions will be found in Chapter VII. of "The Law of Psychic Phenomena." You will see by that that I am decidedly of opinion that a test of Dr. Simon's powers, under the conditions hinted at in your letter, would be almost sure to result in failure. No hypnotist can do justice to himself or to his science in the presence of a skeptical audience, or in the presence of a hostile critic; and more especially is this true if the subjects know that they are being subjected to a test of the genuineness of their condition. If Dr. di Moise knows anything about hypnotism he is aware of this fact, and he knows, therefore, that he has it in his power to produce such mental conditions as would result in inevitable failure. It follows that it would be extremely hazardous for Dr. Simon to undertake to demonstrate his powers in an actively hostile presence. This, however, is a matter for his own consideration.

But, supposing his success to be complete, I do not see how it could be of any value to the Psychological Section, or how it could throw any light upon our studies of the science. We all know hypnotism to be a fact, and we are not dependent upon his success in any given experiment for that knowledge. On the other hand, if his failure should be complete, it would only show, what we all know beforehand, that success depends upon conditions that are not always at the command of the hypnotist.

Again, supposing it to be possible to demonstrate by the proposed experiment, (which it is not), that Dr. Simon is an unmitigated fraud, it does not interest us to know that there is one fraud more or less in the world who pretends to have a power or a knowledge that he does not possess. It might interest Dr. Simon and possibly Dr. di Moise; but it does not interest the Psychological Section, nor could it possibly add to its stock of information on the subject of hypnotism.

Hypnotism is not on trial in this controversy. At most it is Dr. Simon who is on trial, and, as I have suggested, under very disadvantageous circumstances. The appointment of a Commission under the circumstances would give color to the idea that it is Hypnotism, and not Dr. Simon, that is on trial; and the verdict of the public would be rendered irrevocably for or against Hypnotism, just in accordance with the result of the one proposed experiment; or, worse still, according to the estimate of the evidential value of the experiment, by a hostile critic, and with one thousand dollars in the scale against the man on trial.

History is prone to repeat itself; and this is not the first time that hypnotism has been placed on trial before a tribunal composed of hostile critics and an ignorant or indifferent public. I cannot forget the so-called investigations of the French Royal Academy of Medicine. A committee composed of its ablest members was appointed by that Academy with instructions to investigate the claims of Mesmerism. After nearly six years of the most scientific and exhaustive experimentation it reported in favor of Mesmerism and endorsed, practically, all the claims made in its behalf. That report was received in silence. It was never published by the Society, but was filed away among the manuscript archives of the Academy. Another committee was immediately appointed composed of men avowedly hostile to the claims of Mesmerism; and after two experiments made in an environment of its own invention, that committee reported that it was unable to reproduce the phenomena reported by the former committee. It is unnecessary to add that the verdict of the hos-

tile Academy and the ignorant public was that Mesmerism was an unmitigated humbug, and that those who believed in it must suffer professional as well as social ostracism.

I therefore most seriously protest against the appointment of the proposed Commission, thus giving countenance to the idea that Hypnotism is on trial, and that its status is dependent upon the success of Dr. Simon in his efforts to convince Dr. di Moise, by a future experiment, that in a former experiment his subjects were in a true hypnotic trance.

Let those two gentlemen settle their own controversies. If both are honest and desire to know the truth, Dr. Simon will find no trouble in demonstrating the truth of hypnotism by private experiments.

Forgive this long and rambling letter.

Yours faithfully,

THOMSON JAY HUDSON.

The Chairman of the Section, Prof. Sudduth, writes:

CHICAGO, ILL., January 18, 1897.

Clark Bell, Esq.

DEAR FRIEND:—Your letter of the 16th inst. duly to hand. I deprecate the publicity in regard to the matter. I am sure that it will not redound to the credit of the Society to be mixed up in such an investigation. The papers are determined to "air" the sensational side of the question. I do not know anything about Drs. Simon and Wines, but presume that they are respectable men or you would not have had them on the programme. The less publicity there is given to psychical matters the better for all concerned, not that there is not much that is genuine in all exhibitions, but because there is so much prejudice against it. My way of doing is to let the skeptics work things out for themselves. A man that in these latter days denies the truth of hypnosis, proclaims not so much his prejudice, but his ignorance, and my common remark to such is, "Go along and read up the subject, for you do not know enough about it to talk intelligently upon it."

Now, say that you appoint a commission and it sits. I doubt very much whether you will get any definite results. Hypnosis is a mental state in which a condition of double consciousness exists. In order to know that he has been *unconscious* the subject must have been *conscious* all the time. This I have proven to my own satisfaction time and again in subjects, when profound amnesia existed upon awakening, by a system of cross-questioning and association of ideas. That being the case, how are you going to determine whether the patient has been hypnotized or not, except by the result obtained? If the patient is amenable to suggestions that he before refused to obey, then you can say that he is a good subject for suggestion, and that is as far as you can go. I have dropped the use of the word "hypnotism" almost altogether. I have time and again reproduced all the feats supposed to belong to the "unconscious stage" of hypnosis in the waking state in perfectly honest subjects in the privacy of my own laboratory, where there was no need of deception. In fact, I go so far as to tell my subjects that if I catch them trying to deceive me, that that ends their work for me. You can get almost any manifestation you want, provided confidence exists between subject and operator, and the so-called "unconsciousness" of hypnosis is only one phase of the question, and a purely mental one at that.

Now, say your Commission sits and Dr. Simon brings before you a subject and proves to your satisfaction, at the time, that he is in the hypnotic state, by performing a surgical operation even, which is a very easy matter. I will guarantee, at a subsequent sitting, to take the same subject and by suggestion and leading questions to prove to the entire satisfaction of the committee that he knew all about the operation and, it may be, suffered great pain but could not, or at least thought he could not, express it at the time. What would your Commission decide then? Well, most committees would say that all connected with the demonstration were frauds, which need not necessarily be the case at all. To my mind such expositions prove absolutely nothing. They only prove the

truth of my proposition that "Hypnosis" is a mental state and that no matter how deep may be the (apparent) loss of consciousness, that the subject is conscious all the time. It is the same in ordinary sleep or narcosis. Our auditory apparatus works all the time. We "hear" continually, but do not "heed," and so it is in hypnosis. So you see I do not have much faith in anything positive or new coming from "your Commission." It will only demonstrate the fact that very little about the real working of the human mind is known.

Yours to command,

W. X. SUDDUTH.

Prof. Baldwin, of Princeton, writes:

PRINCETON, N. J., January 9, 1897.

DEAR MR. BELL:—I regret that I can not accept your invitation to the Dinner, etc., tomorrow night.

In regard to the Commission which you suggest that I should act with, I must say that I have neither time nor disposition for such enquiries. They generally serve to advertise unworthy people and to tickle the ears of the public; though of this case, I must add, I know nothing.

Yours very sincerely,

J. MARK BALDWIN.

Dr. Osborne, of California, writes:

ELDRIDGE P. O., Sonoma Co., Cal., Feb. 2, 1897.

Clark Bell, Esq., 39 Broadway, N. Y.

MY DEAR SIR:—Your circular letter regarding the Simon di Moise matter just to hand. Frankly I greatly deplore these unfortunate controversies, in scientific bodies, and I cannot see at my long range, what good is to be gained by our *Section* taking *any* action in the affair. It seems to me to be purely a matter for the principals to settle. No doubt the press and the public generally would like you to inaugurate such an "investigation," on *fin de siècle* lines, as might pander to the sensationalism of the day. I believe the best interests of the Society and of the Section, specially, are to be enhanced, however, by a dignified refusal, on the part of the Section and the officers generally, to take *official* notice—as what the provocation or the temptation—of a matter which seems to appeal more to the individual than to the ethics of pure science.

Sincerely yours,

A. E. OSBORNE, M. D.

Sidney Flower, Editor of the *Hypnotic Magazine*, writes as follows, and refers to the extract from his Magazine:

56 FIFTH AVENUE, CHICAGO, January 27, 1897.

Clark Bell, Esq.

MY DEAR SIR:—Your favor received. I must decline to make one of the Commission, but thank you very much for the offer. I think, however, you will find it to be time wasted, as I have pointed out in the Magazine.

Be kind enough to read the communications appended. They are interesting because of the fact that a committee of ten men of science, and of some medical and legal eminence, are about to decide a point that eludes decision. There is absolutely no test known by which it may be determined whether a subject is asleep or awake. The mere induction of anæsthesia or analgesia is no criterion whatever. The eyeballs may be insensitive; the body may be cataleptic; the pulse may respond to suggestion; even the temperature may, in exceptional cases, be raised or lowered; the prick of a pin may be without effect, and through it all the subject may be merely acting a part. On the other hand a genuine case of hypnosis, an active somnambulist, may be hyper-sensitive; the scratch of a pin may cause him to shiver, and the most positive suggestion of the operator may not be able to overcome the nervous dread of the subject. Experimental hypnosis does not change the character of the individual. You waste your time, gentlemen.

Cordially yours,

SYDNEY FLOWER,

Dr. Searcy, Supt. of the Insane Hospital of Tuscaloosa, Ala., writes;
TUSCALOOSA, Ala., January 29, 1897.

Hon. Clark Bell, Esq.,

MY DEAR SIR:—Your letter is the first intimation I have had of the controversy between Dr. Simon and Dr. di Moise. How much part it is proper to take in such a controversy depends so much upon the men themselves that I cannot answer upon that point. Quasi-science, which is largely humbuggery, makes itself prominent always on such subjects, so often, that I hold most such attempts, that seek publicity, with suspicion, and for that reason, on general principles, I would advise against any public exhibition, which, if it should be thoroughly and honestly conducted, would not, in my opinion, result in good to the Society or to the Section. Indeed, if you will allow me to suggest, I feel that there is danger of the Section being so much captured by this sort of ideas and by the kind of investigation that credulity figures very much in, that real science will withdraw.

If the affair, however, has gone so far that you are forced to respond to the appetite people have to witness a contest or controversy, you will only have to do it.

I am, truly,

J. T. SEARCY, M. D.

The foregoing replies seem adverse to the test being made as suggested. On the other hand I received further answers as follows:

Prof. Elliott Coues, of Washington, formerly Chairman of the Section, replied as follows:

1726 N St., WASHINGTON, D. C., Jan 28, 1897.

DEAR SIR AND COLLEAGUE:—I see no objection to the proposed test, and would recommend you to go ahead with your plans to that end. Though of course I can give the matter no personal attention, I have no objection to any such use as you may wish to make of my name in official connection with the Medico-Legal Society.

Very truly yours,

ELLIOTT COUES.

Mrs. C. Van D. Chenoweth, one of the Vice-Chairmen, replied as follows.

Howard Street, WOOSTER, Mass., January 31, 1897.

Clark Bell, Esq., 39 Broadway, N. Y.

DEAR MR. BELL:—As one of the Vice Chairmen of the Section, I can only say in reply to your questions concerning the affair between Dr. di Moise and Dr. Simon that I have perfect confidence in your discretion, and shall be interested in the results of the test.

Very sincerely yours,

C. VAN D. CHENOWETH.

Judge Abram H. Dailey, one of the Chairmen of the Section, replied as follows:

BROOKLYN, N. Y., January 26, 1897.

DEAR MR. BELL:—From what you write me I do not see that any but the Commission have any business with the affair between Dr. di Moise and Dr. Simon. Let the Commission witness, examine and decide. What right has the public or the press to be present? I can see none.

I do not agree that the great majority of hypnotists are frauds.

Yours hastily,

A. H. DAILEY.

Dr. F. E. Daniel, of Austin, Texas, Editor *Texas Medical Journal* and one of the Vice-Chairmen of the Section, replied as follows:

AUSTIN, Texas, January 29, 1897.

Hon. Clark Bell, Vice-Chairman Psychological Section Medico-Legal Society, etc., New York.

DEAR SIR:—Replying, *seriatim*, to your inquiries, I would say to interrogatory 1: Yes, by all means. 2: Before the whole Section, or as many representatives thereof as practicable. 3: Yes, admit reporters. The

public have a deep interest in the subject ought to be informed; have a right to know. If any given party, pretending to the power of hypnotism, is a fraud, they should know it. "Hypnotism" and the various names by which this mysterious force has long been known, is, doubtless, a *force*, known only by its manifestations; and science should endeavor to learn something of its source, mode of propagation, the laws which govern it, etc., with a view to its becoming useful to mankind. The fact that many who pretend to its exercise and control are frauds, does not prove that there is no such agency. "Whether," in answer to your other inquiries, "such inquiry, action and test" would "be of any value to the Section;" that remains to be seen. It might, or it might not "throw any light on our studies of the science." The subject of hypnotism comes legitimately within the scope of the Section on Psychology, and, as Mr. Pecksniff is quoted as having said of the study of architecture, "an eligible opportunity now presents to investigate it." I favor a scientific investigation of the subject, and of this man Simon's pretensions.

Respectfully,

F. E. DANIEL.

Dr. T. D. Crothers, of Hartford, Conn.:

HARTFORD, Conn., January 26, 1897.

MY DEAR MR. BELL:—As you remark, the test would benefit Dr. Simon more than bring out any new facts. He may or may not have real subjects, and in either case it only concerns him. The Section might hold a public meeting for the scientific study of the phenomena of hypnotism, and if Dr. Simon will pay the expenses of a public exhibition, and the Commission to report on it, it would be a splendid advertisement for him. Dr. Simon would first of all be the most benefited, and the Section would be made prominent by it. You know any clever man can secure a half a dozen cases, in New York, who are genuine cases for hypnotism and make any exhibition a success. The formality of a commission to decide on such success, would not add anything to science, but would be sensational and create a stir for a time. If you can *make anything out of it in a public way, go on; appoint a Commission* and have a public test, but have the Doctor pay the bills, to begin with, because he will, of all others, be most benefited. I will come down and help you, if possible. In all probability Dr. Simon would succeed in proving the reality of his claims but, should he fail, it would create a sensation for a time. Act as you think best. You can judge better than any others what is best.

Yours truly,

T. D. CROTHERS.

R. J. Nunn, M. D., of Savannah, Ga., wrote me:

SAVANNAH, Ga., January 27th, 1897.

Mr. Clark Bell, Secretary Medico-Legal Society.

DEAR SIR:—Your circular (without date) from the office of the Vice-Chairman and Secretary of the Psychological Section of the Medico-Legal Society, touching the appointment of a commission to determine certain points at issue between Dr. di Moise and Dr. Simon, has been received. I am entirely unacquainted with the merits of the case, and would ask you to send me such papers as you have on the subject, which of course I will promptly return.

I return you, as requested, the clipping from the Journal of the 15th. Upon receipt of your reply I will send you an answer in full, but there are certain general questions with which I cannot now deal.

The committee, if it should be desired that its decision should have any weight, should itself first be examined, and should prove its ability to detect fraud and recognize truth. How this is to be done is a question which should be left to be determined after its appointment, but in any case the tests should be of such a character as would carry conviction to the scientific world.

Yours truly,

R. J. NUNN.

William Lee Howard, of the Medical and Chirurgical Faculty of Maryland, wrote:

BALTIMORE, MD., January 28th, 1897.

DEAR MR. BELL:—Your communication regarding the investigation of Dr. Simon has just been received and would have been answered sooner, had it not been misdirected, as you will see by the enclosed envelope.

To satisfy a large number of interested people, and to show to the public the real merit of impartial scientific investigation on the part of the Medico-Legal Society, I believe a Commission should be appointed. Let this commission be made up of impartial *scientific* men. As much as I regret the state of affairs I believe more injury would be done by excluding the press than otherwise. I do not advise any more publicity than this: I mean that I do not believe that the commission could do satisfactory work at a public demonstration. I should be pleased to act on the Commission.

Yours truly,

WILLIAM LEE HOWARD.

Sophia McClelland, one of the Vice-Chairmen, replied:

WESTCHESTER, New York City, January 26, 1897.

Hon. Clark Bell, Vice-Chairman and Secretary Psychological Section.

DEAR SIR:—In reply to your note of inquiry regarding the attitude to be assumed by the Psychological Section in the further investigation of Dr. Simon's methods of hypnotism, as demonstrated by him, before the Section, at its recent meeting, and of the part to be assumed by the Section in the controversy resulting from the same, 1st I am strongly in favor of having a commission appointed for this purpose, and that it be selected from *representative* members of the Section, and others *not* members of the section, who are eminent and noted in their several professions; for instance, a sharp Criminal Lawyer, a Scientist, an Alienist and a Neurologist—such men as Prof. Chandler of Columbia, Dr. Dana, Dr. Fred. Peterson, and others who are equally well and favorably known to the professions and the scientists. Do not get any *fossils* in the collection, but up-to-date, wide-awake minds, that are on the alert.

2nd. I don't think the test should be made before the whole Section. I have always found that large committees hamper and impede investigation, and there are so many more to satisfy. The next question, Should the press be allowed to be present? My answer would be, No, emphatically No! You might have a representative of the Associated Press, if you thought best, but the general public look upon it all as a *show*. It is all a matter of curiosity with them. Moreover, the proceedings and their results should be *first* proclaimed in the professional journals.

I think this investigation is due, because as it now stands incomplete, as "unfinished business," it would throw light upon our studies, be a practicable demonstration of the verity or falsity of the claims for scientific recognition. In France and England they have pushed these investigations far ahead of us in this matter. Again, it is not "a personal controversy between Dr. Simon and his critics." As it now stands it is most unsatisfactory—either side may claim the victory. In justice to Dr. di Moise, the Commission should be appointed—and I should feel honored to act as a member of such a Commission.

Very sincerely,

SOPHIA MCCLELLAND.

Dr. James R. Cocke, of Boston, wrote me at length, and I give only extracts from his letter:

BOSTON, Mass., February 5, 1897.

Mr. Clark Bell, New York, N Y.

DEAR SIR:—I regret exceedingly that yours containing clipping from *New York Journal* of January 15, was overlooked. I am so busy with experiments in psychology, hypnotism and medical practice, and besides this am obliged to do so much reference work, that I am apt to let correspondence lag a little.

Concerning Dr. Simon's experiments, let me say that I should be very happy to be a member of such a commission. Facts ascertained by me during the last three years have compelled me to change many opinions I held three years ago, therefore I shall re-write my book in that spirit of scientific fairness which such a subject deserves. Personally I do not believe that any tests made by the commission would prove of value unless some member or members of the commission performed the hypnotic experiments upon Dr. Simon's subjects. While I have no objection to them being given publicly, after we have obtained the results, personally I would advise that the first experiments be conducted in private. I have certain tests of my own which I will communicate to you in confidence.

I never induce catalepsy for medical purposes. I do not believe that there are any definite stages of hypnosis. These stages are merely the product of the late Prof. Charcot's mind revealed to some subject by his verbal suggestion. The larger portion of these subjects belong to a class known as courtesans. Conscienceless, imaginative, and withal superstitious, they deceived Charcot, and afterwards that quintessence of gullibility, Binet. As I said a number of years ago I now repeat to you, there are a number of mental states which can be mistaken for hypnosis. Prominent among these is an artificially produced hysteria. This is best accomplished by violent stimulation of the senses, by means of a revolving mirror, mesmeric passes, music, etc. The true condition of hypnosis is a condition in which an artificial repose is produced and in which the centers, ordinarily under control of volition, are subject to suggestion. However the only test which I will acknowledge as conclusive of the hypnotic state is one which effects the nervous centers not ordinarily or usually under the control of the will. The vaso motor centers should be pre-eminently classed under such a category. Next comes the sense of touch. Trained hypnotic subjects can and do endure great pain.

Should you wish me to serve on the committee to decide upon Dr. Simon's cases, please let me know in time. I have dictated this very hastily and trust you will pardon any lack of clearness.

Once more let me say that unless Dr. Simon will let me hypnotize his subjects under the conditions I may see fit to prescribe, my services will be useless.

I regret that I have been unable to give more attention to the Psychologic Section of the Medico-Legal Society, but must plead again as my excuse an intensely busy life and also the time required in conducting experiments of which it will take years to decide the nature.

With best wishes for the Society and hoping I may have the pleasure of seeing you soon, I remain

Yours sincerely,

JAMES R. COCKE.



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CRIMINAL APPEAL IN ENGLAND.

BY CLARK BELL, ESQ., LL. D., OF THE NEW YORK BAR.
PRESIDENT OF THE MEDICO-LEGAL CONGRESS.

The proposed amendment of the Law of Criminal Procedure in England, allowing an appeal to the convicted, is attracting the attention, not only of the British public, but of all English speaking people.

A bill has been introduced in the Parliament of Great Britain, by Mr. Pickersgill and his colleagues, which has already reached a second reading, entitled, a bill for the creation of a Court of Criminal Appeal, which has given rise to a discussion of the subject in England, the echoes of which have reached the ears of those who have a regard for the welfare of England in the Western Hemisphere.

The bill has a memorandum enclosed stating that "It is framed to give effect to the recommendations of the judges, in their report in 1892 to the Lord Chancellor. So far as is consistent with that purpose the drafting follows the bill brought in by Sir Henry James, (now Lord James of Herford) in 1890."

It is perhaps unfortunate that Mr. Pickersgill has placed the reasons of the bill on such narrow lines as the acknowledged disparity of sentences. He has been quoted as saying: "The bill was rendered necessary by the disparity of the sentences which were passed for precisely the same class of offences and committed under similar circumstances."

Disparity of sentences is a recognized evil on both sides the Atlantic; one most difficult to remedy, but it is only

an incident to the major and more important question which confronts the British publicists, where under the present system an innocent person wrongfully convicted on a trial before a single judge, is placed wholly outside the judicial power to correct any errors or mistakes of law or fact occurring on the trial, or review or modify the sentence.

It must be felt, however, that the radical defect in the the existing system lies in this:—that it should be within the power of the judges of England to remedy by review any conviction where it has resulted from either:

a. The introduction of improper evidence.

b. The improper exclusion of evidence.

c. By means of a new trial based upon the revelation of newly discovered evidence or

d. On a review by an appellate tribunal composed of several judges, entirely removed from the excitement and prejudices so often surrounding the trial; of all the evidence and facts of the case, and where it appears to the court that the prisoner should not have been convicted, or that injustice had been done.

It is not compatible with the rights and safety of the citizen; with the dignity of the judiciary; nor with the majesty of the law itself; that the supreme judicial authority of the nation should be placed in a position where it cannot correct an acknowledged error of law by a single judge, made in the heat or excitement of a trial, or a gross error of fact found by a jury; in cases where great public excitement, and even a hostile expression of public feeling, has surrounded both judge and jury, in criminal cases, especially in capital cases, where human life is at stake.

While the conviction of innocent persons on criminal charges may be conceded to be exceedingly rare, there is

no one who will dispute or deny, that such cases do sometimes occur. It surely is unnecessary to cite examples here. But we must not fall into the error of regarding them so rare as not to require suitable recognition.

Mr. Justice Grantham states, as a fact, that 4600 petitions were made last year to the Home Secretary from convictions, upon which 420 orders had been made by that officer, granting relief asked, in whole or in part in England. What stronger fact could be found for the absolute necessity and propriety of appeal in criminal cases?

Why should English law deprive English judges of the power of remedying such miscarriages of justice?

It is not necessary to speak of the defects of the present system, which must rely wholly on a Home Secretary; who may not be a lawyer at all, or familiar with the principles of law. No Englishman can deny that an English full bench of judges, would be a safer and far better tribunal to pass upon such a case; than the present Home Secretary of Great Britain; and this must not be regarded as at all disparaging to the present official; and I would be willing to say, safer than any Home Secretary of Great Britain in office for the past quarter century, and this I say notwithstanding some of the ablest men in England have graced that office in the recent past. An English judge should have the courage of his convictions, and be beyond the reach of popular clamor, and wholly outside of party behest or dictation. An English Home Secretary is a partisan political officer, and must take care that no act of his shall injure his party, and that his reasons for action will satisfy his political friends.

The tribunal proposed by the bill, six judges selected by the judges of the Queen's Bench division of the High Court of Justice, sitting with the Lord Chief Justice, should surely command the confidence of the British public, and

ensure against miscarriage of justice or injustice to the citizen. .

It is doubtful if any judge sitting on the British bench would claim that his decisions in a civil case ought not to be subject to review by an Appellate Court. Why?

Is there any greater danger in the ruling of a single judge in the one case than in the other? Has the hurry and excitement of a trial, any conditions which make a trial judge infallible in criminal, and occasionally erring in civil trials? Is the liberty or the life of the citizen charged with crime, of less value in British eyes, than the bank account of the defendant; which should give a right to an appeal to save his property, and deny it to save his life?

The venerable Judge A. L. Palmer, who so many years has adorned the Supreme Bench of the Province of New Brunswick, in the Dominion of Canada, in explaining to me the workings of the Appellate Court there, from the decision of a single judge; where all the judges sit in review of the decisions of one; (who in that province sits also in review of his own decision and discusses with his confreres the reasons that influenced his ruling in the court below); that he has, where his own rulings have been under consideration, when persuaded by the reasoning of his associates, voted to reverse his own decision, and that similar instances are not unfrequent. .

How much more dignified, how much more honorable to the judiciary of the British Province is such a method of rectifying a judicial error, occurring on a trial before a single judge, than to place it outside of the power of the judiciary, to correct its own errors, rectify its own mistakes within the lines of well defined judicial procedure.

Canada has always had its Minister of Justice, clothed with as great, and now with greater powers than the

Home Secretary of Great Britain, in such cases, as I shall show later; and yet it is the judges of the Dominion, that now correct by review on appeal in criminal cases, all errors of law or of fact.

It has been urged by Lord Justice Lopes in a charge he is reported to have recently made to the grand jury at the Wilts Quarter Sessions, in commenting on the "Bill for the creation of a court of criminal appeal" now pending in the House of Commons:

That the bill was very crude and difficult to understand; that it had a two-fold object: 1st. To give an appeal on facts in criminal cases, and thus minimize the risk of the innocent being convicted; and 2nd. To promote the uniformity of sentences. And his lordship discusses the difference between the trial of civil and criminal cases thus:

The comparison of criminal cases with civil is delusive; they stand altogether on a different footing.

In civil cases the verdict proceeds on the weight of the evidence, and no verdict of a jury is allowed to be impeached, unless it is so unreasonable as to be almost perverse, a state of things which, in a criminal case, would justify the interference of the Home Secretary. In criminal cases the accused is presumed to be innocent until proven guilty, and the jury are emphatically told that they must not convict, unless they are satisfied, beyond a reasonable doubt, of the guilt of the accused.

The risk of an innocent person being convicted in England is infinitesimal, and that risk, in my opinion, will be practically removed if, as I hope soon will be the case, the accused and the husband and wife of the accused are permitted to give evidence in criminal cases.

This learned judge also adds:

The existence of a Court of Appeal empowered to reverse a conviction of facts will introduce an element of uncertainty in the administration of the criminal law highly detrimental to the deterrent effects of punishment.

And he adds:

It will relax, too, the sense of stern responsibility now so keenly recognized by the juries, proceeding, in my judgment, from the feeling that their verdict is final and irreversible.

And he also states as an objection:

Is there to be an appeal in every criminal case? If so the, the temptation to appeal will be overwhelming.—and at whose cost?

In the case of the poor man, it must be at the cost of the public, otherwise the rich will have an unfair advantage over the poor.

This learned judge may be said to voice the present objections to reform in British Criminal Procedure, on the part of some members of the British bench, or of those who oppose.

The light which experience has thrown on this subject, upon the objection presented by his lordship, in the American States and the British Provinces of North America, has been brilliant, convincing, steadfast and so conclusive; that it is doubtful if any Canadian or American judge would share the apprehension Judge Lopes has expressed.

1. There is no American State, or British Province in the Dominion of Canada, that would consent to deny the right of appeal in a criminal case, where there was any reason to believe that such a review, might result in the reversal of an illegal conviction for errors of law, or errors of fact.

2. While it is quite true that the jury on the American continent would be instructed, as in England, "that they must not convict unless they are satisfied beyond reasonable doubt of the guilt of the accused," there is no difference here on the review, of the rules or weight of evidence on appeal, between civil and criminal cases.

Here we give the judiciary the power to correct its own errors and mistakes, if any have occurred; there the Judiciary are deprived of that right.

Would a British Bench of Review be an unsafe tribunal for such cases in the opinion of his lordship? Would the tribunal named in the bill be unsafe?

The presumption of guilt and innocence are alike in both countries, and its consideration is of course outside the question, of the necessity and reliability of the Court of Review in criminal cases.

I assume that Lord Lopes will agree, that the risk of the conviction of innocent persons is substantially alike, in

England, the Canadian, the New England and indeed generally in the American States.

His views in this respect concur with Chief Justice Jonathan Ross, of the Supreme Court of the State of Vermont, which I give later. I quite agree with his lordship in fearing that the great evil of disparity of sentences can not be remedied, by such a clause, as is contained in the bill. No such attempt has been made here, that I am aware of in any American State.

In many of the United States, the husband and wife of the accused, and the accused, may testify, but no judge here, where such legislation as Lord Lopes desires generally exists, (and while many concur and agree with him in the wisdom of the provision,) would claim under the light of experience, that this provision would result or has resulted in "practically removing that risk of the conviction of innocent persons."

Nor has the experience of all these years of our courts, nor the experience of our bench, of our bar, or prosecuting officers, given us any reason to claim that the right of appeal now universal in criminal cases, outside of Great Britain, has been detrimental to the deterrent effects of punishment as feared by his lordship.

A review of only one hundred years in the Law of Crime and Criminal Procedure in England, has led the thoughtful student of penology, to carefully review the whole subject of the deterrent effects of punishment for crime.

More than one hundred and fifty crimes were capital in England not many years ago. They are now reduced to three and practically to two, as no one has suffered death for treason in our day.

Has crime increased in England by reason of the abolition of these so-called capital offences?

Has crime increased in any state or country where the death penalty has been abolished?

We may be called upon, if we are not already called upon, to recast our opinions upon the whole question of the deterrent effects of punishment upon the volume of crime, by penal statutes.

Facts, experience and results, are to our civilization not unlike the Röntgen Ray to science, which penetrates those substances we were taught to regard as opaque by our early school masters.

In Her Majesty's Dominion of Canada, the law of criminal appeal is as broad and free, as in any American State.

Is the responsibility resting upon a Canadian jury less stern, less keenly recognized, less conscientious, less careful, intelligent and searching on a trial for murder, where the life or death of the accused is trembling in the balance, than that of a jury in London, in Liverpool, in Manchester, or anywhere in England, Ireland, Scotland or Wales?

Each takes the same oath, almost identical as to form and substance.

How can the right of appeal everywhere, almost the inherent right of an American citizen, and of a Canadian subject of Her Majesty, lift in any sense the responsibility, that rests upon the conscience of a juror, either in one of the American states, the Canadian provinces, or in any one of the British Islands?

Lord Lopes thinks "that with a universal right of appeal the temptation to appeal would be overwhelming."

Let me assure his lordship, that so far as I know, in every American state, certainly in every British province in North America, the right of appeal, where the life of the citizen is at stake, in a proper case, is given to every human being.

As a result the facts do not bear out or justify the fears of his lordship. The courts hear them all without any strain.

"At whose cost?" asks his lordship, fearing the rich will have an unfair advantage over the poor.

Not so here, Lord Lopes—not so in the Dominion of Canada.

The Government, before it takes the life of the condemned, in all American courts, would, in case he appealed under the forms of law, see to it that his case was properly and ably presented to the Court of Appeal, and at the expense of the state, if the accused was poor and without means.

The consideration of the cost of an appeal, to the state is too low a plane, for the discussion of so grave a question, as the life of a citizen, charged with a capital crime, everywhere on the American continent, as it would be, in my opinion, everywhere in the Islands of Great Britain.

THE HOME OFFICE SYSTEM.

It is not necessary to assail a system so long and so historically associated with the disposition of criminals as that of the English Home Secretary.

In many respects it is an admirable system. It should remain with all its functions and its powers unimpaired.

It has faults that could be corrected, evils that could be remedied, and its powers might be even increased, as has been done in Canada. At present its powers are limited to pardon and commutation.

Under American Constitutions, this is regarded as the province of the executive and is vested for the general government in the President of the United States, for crimes against the government; and in the states,—in the executive sometimes acting with a board of pardons.

In the Dominion of Canada the power exercised by

the Home Secretary in Great Britain, is vested in the "Minister of Justice," and the new statutes of the Dominion also give to this officer a power not given to the Home Secretary of Great Britain,—a power that is not executive, but judicial; a power unprecedented in modern governments, so far as I have any knowledge; a power in any case of his own volition, and in his discretion, *to order a new trial before any court in any part of the Dominion of Canada.*

Such a power could not be granted an executive, in the American States, because all judicial power and functions, are vested in the judiciary, by the organic law.

The right of appeal, if given in England, should not and would in no wise impair the power or function of the Home Office.

In Canada the right of appeal is entirely judicial, and is outside the functions of the Minister of Justice.

It is only recently that, in the government of the United States, a Court of Criminal Appeal has been created, in the Federal Courts.

Our early practice in this regard was based on English precedent, but the right of appeal in criminal cases was found to be necessary and proper, and the appellate tribunal was recently created.

It will no doubt be of interest to the British public to see how the law of criminal appeals, is provided for in the American States, and British Provinces on this continent, and I submit the views of eminent judges and jurists, to aid in the elucidation of this question and assist in its discussion.

THE DOMINION OF CANADA.

Through the courtesy of Hon. A. G. Blair, formerly the Attorney General of New Brunswick and Premier, now Minister of Railways of the Dominion of Canada, and one

of the ablest lawyers in the dominion, I am enabled to give an outline of the present criminal practice there.

The present mode of criminal cases, in Canada, is very similar to that which has always been followed. "The Criminal Code" is a consolidation of the old law, and applies to the whole dominion.

The suspected person is taken before a magistrate and committed. He is then indicted before a grand jury and afterwards tried by a judge and jury. This is a final disposition of the case, unless further proceedings are applied for under Sections 743, 744, 747 and 748 of the Code.

The Criminal Code, 1892, 55-56, Victoria Chap. 29, regulates this practice in criminal cases: Title VII, Part LII, Page 241, Section 742 to Section 751, both inclusive, are as follows:

APPEAL.

742. An appeal from the verdict or judgment of any court or judge having jurisdiction in criminal cases, or of a magistrate proceeding under Section 785, on the trial of any person for an indictable offense, shall lie upon the application of such person, if convicted, to the Court of Appeal in the cases hereinafter provided for, and in no others.

2. Whenever the judges of the Court of Appeal are unanimous in deciding an appeal brought before the said court, their decision shall be final. If any of the judges dissent from the opinion of the majority, an appeal shall lie from such decision to the Superior Court of Canada, as hereinafter provided.

743. No proceeding in error shall be taken in any criminal case begun after the commencement of this Act.

2. The court before which any accused person is tried may, either during or after the trial, reserve any question of law arising either on the trial, or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the judge, for the opinion of the Court of Appeal, in manner hereinafter provided.

3. Either the prosecutor or the accused may, during the trial, either orally or in writing, apply to the court to reserve any such question as aforesaid, and the court, if it refuses so to reserve it, shall nevertheless take a note of such objection.

4. After a question is reserved the trial shall proceed as in other cases.

5. If the result is a conviction, the court may in its discretion, respite the execution of the sentence or postpone sentence till the question reserved has been decided, and shall in its discretion, commit the person convicted to prison or admit him to bail with one or two sufficient sure-

ties, in such sums as the court thinks fit, to surrender at such time as the court directs.

6. If the question is reserved, a case shall be stated for the opinion of the Court of Appeal.

744. If the court refuses to reserve the question, the party applying may, with the leave in writing of the Attorney-General, move the Court of Appeal as hereinafter provided. The Attorney-General may in his discretion give or refuse such leave.

2. The Attorney-General, or any person to whom such leave as aforesaid is given, may on notice of motion to be given to the accused or prosecutor, as the case may be, move the Court of Appeal for leave to appeal. The Court of Appeal may upon the motion and upon considering such evidence (if any) as they think fit to require, grant or refuse such leave.

3. If leave to appeal is granted, a case shall be stated for the opinion of the Court of Appeal as if the question had been reserved.

4. If the sentence is alleged to be one which could not by law be passed, either party may without leave, upon giving notice of motion to the other side, move the Court of Appeal to pass a proper sentence.

5. If the court has arrested judgment, and refused to pass any sentence, the prosecutor may without leave make such a motion.

745. On any appeal or application for a new trial, the court before which the trial was had shall, if it thinks necessary, or if the Court of Appeal so desires, send to the Court of Appeal a copy of the whole, or of such part as may be material of the evidence, or the notes taken by the judge or presiding justice at the trial. The Court of Appeal may, if only the judge's notes are sent, and it considers such notes defective, refer to such other evidence of what took place at the trial as it may think fit. The Court of Appeal may in its discretion send back any case to the court, by which it was stated to be amended or restated. R. S. C., c. 174 s. 264.

746. Upon the hearing of any appeal under the powers hereinbefore contained, the Court of Appeal may

- (a) confirm the ruling appealed from; or
- (b) if of opinion that the ruling was erroneous, and that there has been a mis-trial in consequence, direct a new trial; or
- (c) if it considers the sentence erroneous, or the arrest of judgment erroneous, pass such a sentence as ought to have been passed or set aside any sentence passed by the court below, and remit the case to the court below with a direction to pass the proper sentence; or
- (d) if of opinion in a case in which the accused has been convicted that the ruling was erroneous, and that the accused ought to have been acquitted, direct that the accused shall be discharged, which order shall have all the effects of an acquittal; or
- (e) direct a new trial; or
- (f) make such other order as justice requires: Provided that no conviction shall be set aside nor any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial or some misdirection given, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage was thereby occasioned on the trial: Provided that

if the Court of Appeal is of opinion that any challenge for the defense was improperly disallowed a new trial shall be granted.

2. If it appears to the Court of Appeal that such wrong or miscarriage affected some count only or the indictment the court may give separate directions as to each count and may pass sentence on any count unaffected by such wrong or miscarriage, which stands good, or may remit the case to the court below with directions to pass such sentence as justice may require.

3. The order or direction of the Court of Appeal shall be certified under the hand of the presiding chief justice or senior puisne judge to the proper officer of the court before which the case was tried, and such order or direction shall be carried into effect. R. S. C., c. 174, s. 263.

747. After the conviction of any person for any indictable offence, the court before which the trial takes place may, either during the sitting or afterwards, give leave to the person convicted to apply to the Court of Appeal for a new trial on the ground that the verdict was against the weight of evidence. The Court of Appeal may, upon hearing such motion, direct a new trial if it thinks fit.

2. In the case of a trial before a Court of General or Quarter Sessions, such leave may be given, during or at the end of the session, by the judge or other person who presided at the trial.

748. If upon any application, for the mercy of the Crown, on behalf of any person convicted of an indictable offence, the Minister of Justice entertains a doubt whether such person ought to have been convicted, he may, instead of advising her Majesty to remit or commute the sentence, after such inquiry as he thinks proper, by an order in writing, direct a new trial at such time and before such court as he may think proper.

749. The sentence of a court shall not be suspended by reason of any appeal, unless the court expressly do directs, except where the sentence is that the accused suffer death or whipping. The production of a certificate from the officer of the court that a question has been reserved, or that leave has been given to apply for a new trial, or of a certificate from the Attorney General that he has given leave to move the Court of Appeal, or of a certificate from the Minister of Justice that he had directed a new trial, shall be sufficient warrant to suspend the execution of any sentence of death or whipping.

2. In all cases it shall be in the discretion of the Court of Appeal in directing a new trial to order the accused to be admitted to bail.

750. Any person convicted of any indictable offence, whose conviction has been affirmed on an appeal taken under section seven hundred and forty-two may appeal to the Supreme Court of Canada against the affirmance of such conviction; and the Supreme Court of Canada shall make such rule or order thereon, either in affirmance of the conviction, or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect: Provided that no such appeal can be taken if the Court of Appeal is unanimous in affirming the conviction, nor unless notice of appeal in writing has been served on the Attorney-General, within fifteen days after such affirmance, or such further time as may be allowed by the Supreme Court of Canada, or a judge thereof.

2. Unless such appeal is brought on for hearing by the appellant at the session of the Supreme Court during which such affirmance takes place, or the session next thereafter, if the said court is not then in session, the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court or a judge thereof.

3. The judgment of the Supreme Court shall, in all cases, be final and conclusive. 50-51 V. c. 50, s. 1.

751. Notwithstanding any royal prerogative, or anything contained in *The Interpretation Act* or in *The Supreme and Excheques Courts Act*, no appeal shall be brought in any criminal case, from any judgment or order of any court in Canada to any Court of Appeal or authority, by which in the United Kingdom appeals or petitions to Her Majesty in council may be heard. 51 V., c. 43, s. 1.

The present mode of procedure after conviction is fully set out in Sections 742 to 751, both inclusive.

Appeals to the Privy Council are abolished, see Section 751.

There is no provision in the Canadian law with regard to requiring a certificate from a judge "of reasonable doubt" as exists in some of the American States.

The courts to which appeals lie are clearly defined in the Sections above referred to.

There is no later Act with regard to criminal cases than this:

I am assured by Mr. Blair, that up to the present moment, no minister has ever granted a new trial on such an application as is provided for by Section 748.

There is no reason to doubt that it would be granted by the minister if a proper case was made under this Section, which clothes the Minister of Justice with the power, in case "he entertains a doubt whether such person ought to have been convicted," to either advise the Crown to remit or commute the sentence, or he may "after such an inquiry as he thinks proper, direct a new trial at such time and before such court as he may think proper."

This is a most extraordinary, and at the same time most wise power, to thus invest in the minister.

I know of no American State that has any provision analagous to that contained in Section 748 in their criminal code. It must be remembered that this is outside of

and beyond careful provisions for appeals in criminal cases, which are very broad and would almost certainly cover and protect the rights of a citizen where injustice had been done. Indeed if the English Government would adopt the plan in all respects, that her American Colonies have adopted, it would be a long step forward, and would render a miscarriage of justice of very rare occurrence if ever.

STATE OF PENNSYLVANIA.

Through the courtesy of Ex-Judge F. Carroll Brewster, of Philadelphia, I am enabled to give the present practice in that State in criminal cases, showing how the proceedings are reviewed after trial and conviction:

Every person indicted in any Court of Quarter Sessions, or in any county Court of Oyer and Terminer and General Jail Delivery, may remove the indictment, and all proceedings thereon, or a transcript thereof, into the Supreme Court, by a writ of certiorari, or a writ of error, as the case may require; Provided, That no such writ of certiorari, or writ of error shall issue, or be available to remove the said indictment and proceeding thereupon, or a transcript thereof, or to stay execution of the judgment thereupon rendered, unless the same shall be specially allowed by the Supreme Court, or one of the judges thereof, upon sufficient cause to it or him shown, or shall have been sued out, with the consent of the Attorney-General; which special allowance or consent shall be in writing, and certified on the said writ. (Act of March 31, Sec. 33, Brightly's Purdon, 795, Sec. 40, P. L. 439.)

Upon the trial of any indictment for murder or voluntary manslaughter, it shall and may be lawful for the defendant or defendants to except to any decision of the court upon any point of evidence or law, which exception shall be noted by the court, and filed on record as in civil cases, and a writ of error to the Supreme Court may be taken by the defendant or defendants, after conviction and sentence. (Id. 533, Brightly's Purdon, 796, Sec. 41.)

No such writ shall be allowed, unless special application be made therefor, and cause shown, within thirty days after sentence pronounced; if the Supreme Court be sitting in banc in any district, the application shall be made, and cause shown there; if the said court be not sitting, application may be made to, and cause shown before one of the judges of that court; and upon the allowance of such writ, the said court or judge shall fix a time and place for hearing the said case, which time shall not be more than thirty days thereafter; if the said court shall be at that time sitting in banc in any district of the State, the said court or judge, upon the allowance of any such writ, shall make all such proper orders, touching notice to the Commonwealth, and paper-books, as may be considered necessary. (Id. Sec. 59, Brightly's Purdon 796, Sec. 43.)

Upon the affirmance of the supreme court of the judgment in any case, the same shall be enforced pursuant to the directions of the judgment so affirmed, and the said court may make any further order requisite for carrying the same into effect; and if the supreme court shall reverse any judgment, they shall remand the record, with their opinion, setting forth the causes of reversal, to the proper court for further proceeding. (Id. Sec. 61, Brightly's Purden, 796, Sec. 45.)

No writ of error or certiorari, in capital offences, shall be issued from the supreme court to any court of oyer and terminer and general jail delivery to remove the indictment, record the proceedings to the supreme court for review, after twenty days from sentence, unless specially allowed by the supreme court, or a judge thereof. (Act of March 24, 1877, Sec. 1, P. L. 40, Brightly's Purdon, 797, Sec. 48.)

In all cases of murder in the first degree, removed into the supreme court under the provisions of the first section of this act, or now pending in the said court, it shall be the duty of the judges thereof to review both the law and the evidence, and to determine whether the ingredients necessary to constitute murder in the first degree shall have been proved to exist; and if not so proved, then to reverse the judgment and send the same back for a new trial, or to enter such judgment as the laws of this commonwealth require. (Act of Feb. 15, 1870, Sec. 2, P. L. 15, Brightly's Purden, 797, Sec. 49.)

I sent also to Judge Brewster a copy of Sec. 748 of the Canadian Criminal Code of 1892, viz.:

SEC. 748. If upon any application for the mercy of the Crown on behalf of any person convicted of an indictable offence, the Minister of Justice entertains a doubt whether such person ought to have been convicted, he may, instead of advising Her Majesty to remit or commute the sentence, after such inquiry as he thinks proper, by an order in writing direct a new trial at such time and before such court as he may think proper.

And I asked him to be kind enough to furnish me with his opinion as to the wisdom of that provision.

Judge Brewster replies that his opinion as to the power conferred upon the Minister of Justice in Canada to direct a new trial, etc., is, that it would never be favored in the United States.

Many American lawyers and judges would quite agree with Judge Brewster as to the adoption of that system in American states, because the right of appeal is quite complete without it, as indeed it is in Canada; but under the autonomy of our system of government, and the organization of the Judiciary, it never has been considered proper

to invest any branch of the executive department of the government with judicial powers.

The English plan is in accordance with Sec. 748 and before the adoption of the new Canadian code the Minister of Justice in Canada had substantially the same powers as is now exercised by the Home Secretary in Great Britain under the English Constitution.

The amendment of Section 748 of the Canadian Code is an enlargement of the power of the Minister of Justice which has so long stood under their plan of government in the place of an appeal. Besides, under the Canadian system it would be almost impossible for a Minister of Justice not to be a lawyer of high attainments, while in England, as at present, the Home Secretary need not be even a member of the Bar.

In the American states the plan is for the courts to review the trials which have taken place before a single judge, by the higher courts for the purpose of correcting any errors which there occurred in the heat and excitement of a trial, and to correct errors of law if they occurred or any miscarriage of justice in the judicial branch of the government; entrusting only to the executive the pardoning power but not judicial powers.

STATE OF DELAWARE.

I sent a copy of Section 748 of the Criminal Code of the Dominion of Canada to Judge Ignatius C. Grubb, of the Highest Court of the State of Delaware, with a like request as to the Criminal Procedure in that state and the following is the reply, made by Judge Grubb:

SUPREME COURT—STATE OF DELAWARE,
WILMINGTON, DEL., March 13, 1897.

Clark Bell, Esq., Dear Sir:—In criminal cases in Delaware we have no appeal or writ of error. The convicted person has but three courses to pursue. 1st. Motion for new trial. 2nd. Motion in arrest of judgment. 3rd. Petition to the Governor for a pardon, reprieve or remission of some portion of the sentence.

Capital cases and some others are tried in our Court of Oyer and Terminer, composed of four judges. Other criminal offences, (except a few specified minor ones) are tried in our Court of General Sessions of the Peace and Jail Delivery composed of three judges.

We have now a constitutional convention in session which has resolved to create a Board of Pardons, also to authorize writs of error in criminal cases.

I have not thought of your second proposition and am unable to give an opinion respecting it.

Yours truly,

I. C. GRUBB.

STATE OF RHODE ISLAND.

I addressed the same communication to the Hon. Pardon E. Tillinghast, of the Supreme Court of Rhode Island, and he replied as follows:

SUPREME COURT OF RHODE ISLAND,

PROVIDENCE, R. I., March 13, 1897.

Hon. Clark Bell, My Dear Sir:—Under Art. 2 of the Amendments to our State Constitution, the Governor, by and with the advice and consent of the Senate, has the exclusive power of pardoning criminals, except in cases of impeachment. Criminals, or rather persons charged with criminal offences, no matter of what sort are first tried by a jury, (that is except in petty cases,) after which, if found guilty, they may petition the Appellate Division of The Supreme Court for a new trial. If this is denied the case goes back for sentence, subject of course, to the power of the Attorney-General to *nol pros*, at any stage of the proceeding. The question as to whether there shall be a new trial, is determined according to the ordinary principles which obtain in proceedings of that sort. The defendant's rights are very carefully guarded in the trial court; he has the aid of the State, if necessary, in obtaining witnesses including experts. The State also furnishes him with counsel and pays for the same, if he is too poor to provide one himself, and the result is, as I think, that it is practically impossible for an innocent man to be convicted. I should add that, in all cases the defendant may testify in his own behalf.

To empower any one to grant a new trial, as provided in the Canadian law which you refer to, would be impossible here, as under our Constitution, the judicial power is vested solely in the Supreme Court. See Art. 10, Case, *Taylor vs. Place*, 4 R. I. 324.

Very truly yours,

P. E. TILLINGHAST.

THE STATE OF NEW JERSEY.

I addressed the same inquiry to the Hon. Charles G. Garrison, one of the Judges of the Supreme Court of the State of New Jersey.

The following is his reply:

SUPREME COURT OF NEW JERSEY,
CAMDEN, N. J., March 12, 1897.

My Dear Clark Bell:—Until recently the only appeals in criminal cases were applications to the trial court for new trials and common law writs of errors to appellate courts, with bills of exceptions, in rigid review of legal errors only. There was a Court of Pardons that could remit, but not change legal procedure by directing a new trial.

In 1894 (P. L. P. 246) a comprehensive act required the appellate court to order a new trial whenever "manifest wrong or injury" would result from the judgment rendered. A recent construction of this by a divided court of errors (in *Kohl vs. The State*) is that the Court shall reverse, whenever the findings of the jury was such, that it would not satisfy a considerate mind beyond reasonable doubt. This practically allows no verdict to stand, unless it is also the verdict of the Court of Errors. The opposing and defeated view was, that the Court should reverse only when the verdict was clearly a wrong one. In view of this law and the interpretation, there is no cause for the interposition of a Minister of Justice, as all cases would come either under the Court of Errors or the pardoning power.

Truly yours,

C. G. GARRISON.

The states thus far named were colonies in revolutionary days, and all of these are still nearer the old English system than the states more recently admitted to the American Union. Of these Delaware and Rhode Island preserve still the earlier and primitive practice, while New Jersey has had the most unique judicial system of any American state.

It has had a Chancellor and a chancery system, which still obtains, and Delaware still has its Chancellor.

Pennsylvania never had a distinct chancery system.

There is an agitation at the present moment in New Jersey not only to abolish the chancery system, but to reorganize the entire judicial system, which is quite unique and not followed in any American state.

At present the Court of Chancery, consisting of a Chancellor and five Vice-Chancellors, now has original jurisdiction in all equity cases. The Supreme Court consists of a Chief Justice and eight Associate Justices. All the members of this court do circuit work, with the aid of three

specially appointed Circuit Judges, and sit *en banc* at stated seasons of the year to hear appeals. From their decision a second appeal may be taken to the Court of Errors and Appeals, consisting of these same Supreme Court Judges, the Chancellor, and six lay judges selected by the Governor for specific terms.

The proposed change is to abolish the Court of Chancery and the distinction between law and equity, and create a Supreme Court of Appeals for all cases, and to make the Chancellor and the Vice-Chancellor coördinate with the Justice of the Supreme Court, thus making a bench of fifteen judges of equal powers. That from these the Governor shall designate five to act as the Court of Appeals and the Judges rotate with this Court. Each out of his seven years' term to serve two years on the Appellate Bench. This plan has passed the Senate of New Jersey, but has not yet been adopted.

THE STATE OF MAINE.

I addressed the same inquiry to the Hon. L. A. Emery, one of the judges of the Supreme Court of Maine. The following was his reply:

SUPREME COURT OF MAINE,
ELLWORTH, March 15, 1897.

Clark Bell, Esq., Dear Sir:—Yours of the 12th inst. relative to appeal in criminal cases is received.

In Maine a motion to set aside a verdict of conviction must be addressed to the justice presiding at the trial. His decision is final, except in cases punishable by imprisonment for life. In these cases an appeal to the full bench may be made by the respondent. The statute provides that the concurrence of three justices shall grant a new trial, (the full bench consisting of eight). It is believed by many that this provision is unconstitutional, but so far no case has arisen presenting that question. The full bench has hitherto overruled every such motion unanimously.

It is held that the Appellate Court need not itself be convinced of the guilt beyond a reasonable doubt, but must overrule the motion unless the respondent shows that the verdict was wrong.

I do not think under our constitution a statute assuming to authorize the executive to grant a new trial in a criminal case could be valid. The granting a new trial is a judicial act not to be exercised by an executive official.

Nor do I think such a provision wise. Executive offices or administration offices are amenable to political and social influence; again it is an interference with judicial procedure and would impair the confidence of the people in the certainty of punishment for crime. The mass of the people would feel that rich influential respondents could always have a new trial. The more I think of it the less I like it.

Very truly yours,

L. A. EMERY.

THE STATE OF CONNECTICUT.

In answer to the inquiry addressed to Hon. Charles B. Andrews, Chief Justice of the Supreme Court of Connecticut, the following was his reply:

LITCHFIELD, CONN., March 15th, 1897.

To Hon. Clark Bell:—In this State any person convicted of a crime may appeal to the Court of Errors for any error, that he claims has been committed anywhere, in the proceedings. Statute, Section 1685; see also *State vs. Gleekin*, 58 Connecticut.

Any person under sentence may apply to the State Board of Pardons for an abolition or a conditional pardon.

Indeed, in this State appeals are allowed in criminal trials substantially to the same extent as in civil trials.

Yours very truly,

CHARLES B. ANDREWS.

STATE OF GEORGIA.

I have received the following reply from the Hon. L. E. Bleckley, Ex-Chief Justice of the Supreme Court of Georgia, to my communication addressed to him:

ATLANTA, GA., March 17th, 1897.

Clark Bell, Esq., New York.

DEAR SIR:—In Georgia there is most ample provision for correcting errors against the accused in the trial of criminal trial cases; two trial courts (Superior and City Courts) can each grant new trials, on motion of the accused, for errors committed by themselves, or for insufficiency of the evidence; and one of these (the Superior Court) can review by certiorari any conviction in any minor court whatever. The sufficiency of the evidence to warrant a conviction is thus examinable judicially, in every case as a question of law. So, too, are all other legal questions involved in the case.

If the accused fails, whether in his motion for a new trial, or in his proceeding by certiorari, he is entitled in every case, to a review by the Supreme Court on writ of error. The result is that no person can be punished for any offence whatever, not even for the violation of a town or city ordinance, without the sanction of the highest court in the State, if the accused is not content to abide the judgment of the lower court.

If a reviewing court, whether of certiorari or writ of error, deems the

conviction legally wrong, in any material respect, and is of opinion that a new trial ought to be had; the case is sent back to the court in which the conviction took place, and is there tried again, and if another conviction follows, the like steps may be taken to reach and correct alleged errors on that trial and in its result. Any number of new trials may be thus had until the accused is acquitted or properly convicted.

All corrective work done, is at the instance of the accused. The State acquiesces in all errors committed against itself, and can neither move for a new trial nor sue out any writ of certiorari or writ of error.

I think favorably of the Canadian system for granting new trials at discretion by the executive department of government, where there is no provision for granting them by a Reviewing Court, but such a system would be repugnant to the Constitution of Georgia, and if it were constitutional, would be quite superfluous as a supplement to the very liberal scheme of judicial review which prevails here. As a substitute for this scheme it might serve; but it would not be acceptable to the people and could not be adopted.

Very truly and respectfully yours,

L. E. BLECKLEY.

STATE OF NEW HAMPSHIRE.

The Chief Justice of the Supreme Court of New Hampshire has sent me the following reply to my communication, addressed to him:

SUPREME COURT—STATE OF NEW HAMPSHIRE,
CONCORD, N. H., March 18, 1897.

My Dear Sir:—In reply to your letter of the 12th inst., I beg to say:

(1). Our criminal procedure in the case of felonies, is that of the common law, except as it is modified by our statutes. Pub. Stats. cc. 253, 254, 255, and c. 230, Sec. 1.

(2). The pardoning power is vested in the Governor. Const. Art. 51.

(3). The legislature cannot under the constitution grant a new trial, (*Merrill vs. Sherburne* 1 N. H. 199) and of course cannot authorize the Governor or other officer to grant one. A statute like Section 748 of the Canadian Code would be unconstitutional and void.

(4). The court may for the causes mentioned in Pub. Sts. c. 230 Sec. 1, grant new trials in all criminal, as well as civil cases. *Buzzel vs. State* 59 N. H. 61.

The foregoing, answers, I believe, all your inquiries.

I am, very truly yours,

To Clark Bell, Esq.

A. P. CARPENTER.

STATE OF MARYLAND.

The Chief Justice of the Court of Appeals of Maryland replied to my communication as follows:

STATE OF MARYLAND, COURT OF APPEALS,
FREDERICK, March 18, 1897.

Mr. Clark Bell, New York, N. Y.

DEAR SIR:—Yours of the 12th inst. just received. The criminal prac-

tice and procedure in Maryland, is with one exception, similar to the practice and procedure in civil cases. An appeal may be taken in both, to the court of last resort.

In criminal cases the jury are made the judges of the law, as well as of the facts; and consequently no instructions are given them by the court. This is the only difference between the mode of procedure in civil and criminal cases.

I am not sufficiently well informed as to the law of Canada to give any opinion as to the propriety of conferring such a large power on the Minister of Justice. Under the constitution of Maryland no such power could be given to any ministerial officer. The power to grant new trials is a judicial function and in proper case is exercised by the trial courts.

It is a discretionary power and not subject to review on appeal.

Very respectfully,

JAMES McSHERRY.

STATE OF INDIANA.

Ex-Chief Justice Byron K. Elliott, of the Supreme Court of Indiana, furnishes me with the following state of the law in that state:

INDIANAPOLIS, March 18, 1897.

Mr. Clark Bell, New York City, N. Y.

DEAR SIR:—In reply to yours of the 12th inst. I below quote the principal sections of our statute governing appeals in criminal cases. The sections referred to are those of Burns' Indiana Revised Statutes of 1894.

S. 1954. An appeal to the supreme court may be taken by the defendant as a matter of right, from any judgment in a criminal action against him, in the manner and in the cases prescribed herein; and, upon the appeal, any decision of the court or intermediate order made in the progress of the case may be reviewed.

S. 1958. All appeals must be taken within one year after the judgment is rendered, and the transcript must be filed within ninety days after the appeal is taken.

S. 1961. An appeal to the supreme court from a judgment of conviction does not stay the execution of the sentence, except where the punishment is to the death or the judgment is for a fine and costs only; in which cases the execution of the sentence may be stayed by an order of the supreme court or a judge thereof. Where the punishment is to be imprisonment, with a fine and costs also, the execution of the sentence as to the fine, or the fine and costs only, may in like manner be stayed. In the case of an appeal from a judgment in a capital case, the order of suspension shall specify the day unto which the execution of the sentence is stayed.

S. 1962. An appeal shall stand for trial immediately after filing the transcript and the notice of appeal, if the supreme court is in session; if not in session, at the next term thereof. Appeals from judgments, in capital cases, shall have the precedence of all others.

S. 1963. An appeal shall not be dismissed for any informality or defect in taking an appeal, if the same be corrected in a reasonable time. After

an appeal has been dismissed, another appeal may be taken within the year.

S. 1965. The supreme court may reverse, modify, or affirm the judgment appealed from, and may, if necessary or proper, order a new trial. In either case, the causes must be at once remanded to the court below, with proper instructions, and the opinion of the supreme court shall also be immediately certified to the court below.

S. 1968. When a judgment against the defendant is reversed and it appears that no offence whatever has been committed, the Supreme Court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offence, although defectively charged in the indictment or information, the Supreme Court must direct the warden of the state prison, or the chief officer in charge of the penal or reformatory institution in which the defendant is confined, to cause the prisoner to be delivered over to the jailor of the proper county, there to abide the order of the court in which he was convicted.

S. 1969. On a judgment of affirmance against the defendant, the original judgment must be carried into execution as the Appellate Court may direct.

Our Legislature which has just adjourned passed a law which provides that prisoners of a certain age and for certain offences shall on conviction be sentenced for an intermediate period, and a Board of Pardon is created, which has power to pardon or commute the sentences of such prisoners, when in their judgment the conduct of the prisoners have been such as to warrant such pardon or commutement. I have not been able to give this law a close examination and am unable to furnish a copy, as it is not in print.

I am, however, inclined to very much doubt the constitutionality of such law, for I do not believe that such power can be conferred on such a board, and I do not believe that the courts have power to render anything, but an absolute and definite sentence in such cases.

Under our Constitution, and probably under that of most of the states, no judicial power can be vested in administrative or ministerial officers, and hence such a statute as that of Canada would probably be void.

Very truly yours,

BYRON K. ELLIOTT.

STATE OF VERMONT.

I am under obligations to the Chief Justice of the Supreme Court of Vermont for his views upon this subject as follows :

SUPREME COURT OF VERMONT,

ST. JOHNSBERRY, March 20, 1897.

Hon. Clark Bell. My Dear Sir:—The criminal practice in this State in brief is this: Unless the accused pleads guilty he is tried by a common law jury in the county court. The jurors are selected in town meeting by the several towns in the county, and returned to the county clerk. From those returned the clerk and sheriff draw the jurors for the term, by lot, a certain number being drawn from the names returned from each

town. They are generally intelligent farmer and business men. The trial is governed by rules of common law, generally, except the accused may testify if he so elects. In all cases where the punishment may be imprisonment, if the accused is without pecuniary ability to procure counsel, the court assigns him counsel at the expense of the state. On any claimed errors in the trial, on exceptions duly taken, the trial can be reviewed and corrected in the Supreme Court. The accused also has the right by petition, first to the county court, if seasonably brought, and secondly, later to the Supreme Court, to seek for a new trial, and have it awarded him on the usual grounds; such as newly discovered evidence, etc.

In a connection with the courts for forty years, including twenty-six years as Judge of the Supreme Court, I do not recall but one case where I thought the person was wrongfully convicted. I was one of his counsel, and may have been prejudiced.

Whether the provision existing in the Dominion of Canada is needed there, I cannot say. Much would depend upon the person constituting the Minister of Justice and the limitations under which he is to exercise the power. I do not see how the rights of the accused and of the state, can be better, nor more intelligently protected by such an officer than can be done by the courts under properly guarded and regulated right of petition for a new trial. The courts, under the present system, where a stenographer takes the proceedings in full, can, in my judgment, better understand, and give due force to any newly discovered evidence or other facts than a stranger to the proceedings.

In this State, I think, community suffers more from an unguarded use of the pardoning power by the Governor than from any other cause. On petitions, you know how easy they can be procured. He frequently pardons without any hearing, hardly ever after a public hearing, and where no claim is made that the person was wrongfully convicted. Whether the Minister of Justice could be more guarded and careful would depend upon the man, and the limitations under which he could exercise the power.

Yours sincerely,

JONATHAN ROSS.

STATE OF FLORIDA.

I am under obligation to the Chief Justice of the Supreme Court of Florida for his views upon this subject, as follows:

SUPREME COURT OF THE STATE OF FLORIDA,
TALLAHASSEE, FLA., March 20, 1897.

Mr. Clark Bell, No. 39 Broadway New York,

DEAR SIR:—The laws of Florida give to the accused, in *all* criminal cases the right, *as of course*, to a writ of error to review their trials. All offences *punishable* here by *imprisonment in the penitentiary* or with capital punishment, are defined by our laws as *felonies*. This, the court of last resort, has final appellate jurisdiction in all such cases, and besides, in all misdemeanors, (offences punishable by *fine* or imprisonment in county jails,) that have their initial prosecution by information or indictment in our *Circuit Courts*, the latter being our courts of general and

almost unlimited jurisdiction. Such *Circuit* courts have also final *appellate* jurisdiction in all *misdemeanors* that arise in the inferior courts, such as Justices of the Peace, Municipal Courts, etc. In all of them the proceeding for review is by the old common law writ of error. All matters *in pais* at the trial being brought up with the record by *bill of exceptions*. In this way the *evidence* adduced at the trial can be brought up, and the Appellate Courts, under our laws, have the right to review the *facts* as well as the law of the case; and, where it is *clear* that the evidence does not sustain the conviction, can reverse upon that ground, whether errors of law have been committed or not, and order a new trial.

Upon conviction the convict simply files with the clerk of the trial court, or with the clerk of this court a *præcipe* for a writ of error which issues, *as of right*, and upon his record, he can, if error *prima facie* appears, obtain from the appellate court, or a judge thereof, a *superædeas* suspending the execution of the sentence, until it is disposed of by the appellate court; and, if the offence is a bailable one, he can give bail pending the writ of error proceedings. If he desires to bring up with his record for review matters *in pais* at the trial, he has to prepare within a limited time, and have certified by the trial Judge, a bill of exceptions containing such matters, which, when signed by the Judge and filed with the clerk below, becomes a part of the record to be brought up in response to the writ of error.

The provision, quoted in yours, from the Code of Canada of 1892, lodging with the Minister of Justice the discretion to order a new trial where, upon a review of the whole case, he is left with a reasonable doubt as to the propriety of a conviction, impresses me as a very beneficent one from the standpoint of the humanitarian, but in States like ours of the United States, under a democratic form of government, I seriously doubt its wisdom, particularly where such plenary powers are given to Governors and Pardoning Boards for the granting of pardons, commutation of sentences, etc.

Very respectfully yours,

R. F. TAYLOR,

Chief Justice Supreme Court of Florida.

STATE OF TENNESSEE.

I am under obligations to the Chief Justice of the State of Tennessee for his views upon this subject as follows:

SUPREME COURT OF THE STATE OF TENNESSEE,
NASHVILLE, TENN., March 20, 1897.

Mr. Clark Bell, 39 Broadway New York City, N. Y.,

DEAR SIR:—I am in receipt of your recent letter, asking me to advise you as to appeal practice in criminal cases in this State. There is no limit to appeals in criminal cases whether they be felonies or misdemeanors. In every such case an appeal lies direct from the trial court to the Supreme Court of the State. I regard this as the proper practice here, and think it is one which should prevail everywhere.

Respectfully,

D. L. SNODGRASS,

STATE OF MONTANA.

I am indebted to Judge William H. Francis, formerly of North Dakota, but more recently of Montana, for a resume of the laws of that State. Judge Francis says:

MISSOULA, MONTANA, March 18, 1897.

Hon. Clark Bell, No. 39 Broadway, N. Y.

DEAR SIR:—Answering your favor of the 12th inst., in relation to the proposed amendment to the Criminal Procedure in England, in appeals in criminal cases, I enclose herewith extracts of the Montana law relating to the exercise of the pardoning power and also a brief statement of the criminal practice in relation to new trial.

The laws of the State of Montana, U. S. A., respecting pardoning of convicted criminals, etc., are as follows:

CHAPTER XIII.

SECTION 2630. The Governor has power to grant pardons, absolute or conditional and to remit fines and forfeitures, and to grant commutation of punishment and respites after conviction, and judgment for offences committed against the criminal law of this State. *Provided:* That before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the Governor concerning the same shall be approved by a board, or a majority thereof, composed of the Secretary of State, Attorney General and State Auditor, who shall be known as the "Board of Pardons." The provisions under which these powers are exercised are contained from Section 2631 to Section 2646 inclusive.

Section 2643 is unique so far as I know. It is as follows: When an application is made to the Governor for a pardon he may require the Judge of the court before which the conviction was had, or the County Attorney by whom the action was prosecuted, to furnish him without delay, with a statement of the facts on the trial, and any other facts having reference to the propriety of granting or refusing the pardon.

And Section 2645 provides that:—"The Governor has the power to grant respites after conviction and judgment for any offences committed against the criminal laws of the State for such time as he thinks proper."

The laws of Montana relative to the granting of a new trial to persons convicted of crime are quite voluminous, but it may be sufficient to say:

The power to grant a new trial is not vested in any person or persons except the judge or judges of a court.

When a person is convicted of a crime he may appeal from the District Court to the Supreme Court and said Supreme Court has the power to grant a new trial. If the Supreme Court confirms the judgment of the District Court, the affirmance is final unless a federal question is involved and then appeal may be taken to the Supreme Court of the United States, and its decision is final.

As appears from the law governing the granting of a pardon, the Governor, and the Board of Pardons, neither separately, nor conjointly have any power to grant a new trial.

It seems to me that the proposed amendment section adopted in Canada would be a very radical departure in England and even more so in the

United States. I cannot bring myself to believe that the vesting of the power to grant a new trial absolutely and unrestrictedly in one person would particularly in our own country, and under our system of government and practice, be either wise or beneficent; it might, perhaps, be beneficent so far as the criminal is concerned, but with respect to the community and commonwealth, for the protection and good of which laws are made, it would not, in my judgment, be either wise or beneficent; on the contrary, I think it would be a dangerous step and an unwarranted enlargement of the already ample safeguards thrown about persons tried for crime in the American States.

The power conferred upon the Minister of Justice in Canada, seems to permit one mind and one man to entirely disregard the proceedings, verdict and judgment had in a duly constituted court and under the forms of law.

I state my opinion thus, after considerable experience in the conduct of many criminal trials covering all grades of crime from murder down.

I regret that I am unable to give you a statement of the criminal practice in the State of North Dakota from which I removed to Montana, as, since my removal, an entirely new code has been adopted in North Dakota, to which, by reason of the great distance I cannot have ready access.

As the mails are subjected to much delay at present in this part of the country, I fear this may reach you too late to be of any service to you in formulating your answer to be sent to England.

Very truly yours,

W. H. FRANCIS.

Judge Francis seems to regard the provision adopted in the Dominion of Canada, adversely, but it is from an American judicial stand-point.

The whole English system at the present time and for centuries has been based upon the theory, of vesting in one mind, that of the Home Secretary, and officer of the Crown, the authority heretofore and now vested in the American system in the executive of the government, state and national.

The distinctions between the executive and the judicial powers of the government, which are so sharply defined in American Constitutions, do not exist in the British system, where the seat of power of both branches or departments of the government is vested in or rather derived from the Throne. The Canadian legislators have reserved and kept the same powers in the judiciary, that are exercised by the

courts in American States; and in addition to that, have enlarged the powers of the representative of the Crown, to cover the extreme power conferred by this section of a judicial nature. It may be also due to a feeling most natural in a loyal British subject; which, while providing for appeals, and new trials as fully and as carefully as it is done in many American States; would be unwilling to abridge the powers conferred from time immemorial upon the Crown officers, to commute a sentence or pardon an accused; and that contemplating the possibility of a contingency occurring, when the courts might deny that *res iudicata* to an accused, which the officer or representative of the Crown conscientiously believes he was entitled to, preferred rather to grant extraordinary and even judicial powers, than to abridge them; so that if the government ministers really differed from the judiciary in any case, the Crown would be supreme and could order a new trial even if the courts denied it.

STATE OF COLORADO.

The following Act in relation to writs of error in criminal cases was adopted in 1893:

SECTION 1. Any defendant under sentence for a capital offence may have a writ of error to the Supreme Court upon filing in such court, on or before the commencement of the week of execution, a transcript of the record in the court below, duly certified, with an assignment of errors. In cases wherein a bill of exceptions is necessary to a full understanding of the errors assigned, such bill of exceptions shall also be filed with such transcript. Thereupon the clerk of the Supreme Court shall issue a writ of error to the trial court and a *supersedeas* to stay the execution of the sentence of death, provided the Supreme Court may, for cause shown, extend the time in which any act herein required is to be performed.

SEC. 2. Within twenty days from the issuance of such writ of error plaintiff in error shall cause to be filed an abstract of record, with briefs in support of his assignment of error. The prosecution shall have fifteen days thereafter to file briefs in answer, and ten days shall then be allowed the defendant to reply. Thereupon the cause shall stand submitted, subject to the power of the court to order an oral argument. The court shall determine the issues with all convenient speed.

SEC. 3. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Chief Justice Hon. Charles D. Hayt of the Supreme Court of Colorado, who prepared this act and was instrumental in its passage writes me, that they have been working under this law for the past four years and find it satisfactory.

STATE OF IOWA.

Through the courtesy of the Hon. L. G. Kinne, Chief Justice of the Supreme Court of that state, I am able to give you a statement of the criminal procedure of Iowa.

SUPREME COURT CHAMBERS,
DES MOINES, IOWA. March 24, 1897.

Hon. Clark Bell, New York,

DEAR SIR:—Responding to your recent favor, I beg leave to say that all criminal cases are appealable and in all such cases except in cases of murder of the first degree, the court on rendering the judgment must make an order fixing the amount of the bail bond.

The practice in criminal cases is either to file an information before a Justice of the Peace, whereupon a hearing is had and if he thinks a crime has been committed, he binds the defendant over to appear before the district (trial) court, or the accused party may in the first instance be indicted by the grand jury and thus be brought to trial without a hearing before a justice. In either case he must be indicted by a grand jury and tried in the district court. After he is arraigned he may plead guilty, not guilty or attack the sufficiency of the indictment. If the indictment is held defective he may be remanded to await the action of another grand jury in case the court deems it probable that he has committed a crime. The trial is had under the same rules as apply to all trials generally except as modified by statute. On appeal the Supreme court may affirm, or vacate the judgment below and send the case back for a new trial.

In certain cases the Governor may pardon. I think the power given the Minister of Justice in Canada is a wise one.

Very respectfully yours,

L. G. KINNE.

STATE OF NORTH DAKOTA.

I am under obligations to the Chief Justice of the Supreme Court of the State of North Dakota for his views upon this subject as follows:

GRAND FORKS, March 25, 1897.

Hon. Clark Bell, Dear Sir:—Replying to your inquiries I would say that in this State every defendant in a criminal case has a legal right to

appeal to the Supreme Court from a judgment of conviction. In a capital case the appeal operates of itself as a stay of execution. In all other cases the right to a stay depends upon the ability of the defendant to obtain from a judge of the Supreme Court or from a judge who presided at the trial, a certificate that there is probable cause for the appeal. This leaves the defendant still in the custody of the sheriff, and on giving bail he may be released the same as before trial. The defendant may also appeal from an order refusing a motion in arrest of judgment and from an order denying a motion for a new trial.

The State may appeal in certain cases, but not of course from a judgment of acquittal.

The appeal is taken by serving a notice upon the adverse party or his attorney, and by filing the original notice with the Clerk of Court.

I fully agree with you, that, when the defendant in a criminal case has so little protection against the errors of a trial court, as in England, some such provisions as the one in Canada, is "very wise and better."

I trust I have sent you the information you desire.

Very sincerely yours,

GUY C. H. CORLETT.

STATE OF NEW YORK.

Through the courtesy of Judge Andrews, of the Court of Appeals, of the State of New York, I received the following letter:

COURT OF APPEALS,

ALBANY, NEW YORK, April 1, 1897.

Clark Bell, Esq.:—Your letter of the 19th of March came during my absence.

Writ of errors in criminal cases to review convictions have been allowed in this State from an early period. Under the present statutes, they are reviewed on appeal, first at the Appellate Divisions of the Supreme Court, and a second and final appeal may be taken to this Court of Appeals. But in capital cases, the appeal may be taken as of right in the first instance to the Court of Appeals and the Appellate Court may grant a new trial on the merits, "if it be satisfied that the verdict was against the weight of evidence or against law, or that justice requires a new trial, whether any exception shall have been taken or not in the court below." The court has in some instances reviewed conviction and ordered a new trial on the facts under this Section.

This right of a defendant in a capital case, are guarded by this provision and the court is invested with the power which in the Section you quote from the Canadian statute, is given to the Minister of Justice. I very much doubt the propriety (if it could be done under the Constitution) of conferring upon any state official the extraordinary power given by the statute. It would I think, impair the public confidence in the judgment of judicial tribunals, and I doubt whether the interests of justice would be subserved by conferring it. The accused person has the protection of a jury trial conducted under the supervision of a judge; he has

the right of review on the law in all cases, and on the facts also in capital cases; the pardoning power is also vested in the executive.

My belief is, that there are very few improper convictions. A well founded doubt is quite sure to lead to the granting of a new trial or to the exercise of executive clemency.

Very respectfully yours,

CHARLES ANDREWS.

STATE OF OHIO.

I am under obligations to the Chief Justice of Ohio for the following letter from E. O. Randall, Esq., the State Reporter:

Clark Bell, Editor, New York, N. Y.,

DEAR SIR:—Your favor of March 12th to Chief Justice Williams, handed by him to me for reply. The criminal practice in this State is somewhat similar to that which generally obtains in the other states, viz: Exceptions made may be taken in the trial court and upon them motion for a new trial made. If refused by the trial judge the case may be carried to the Circuit Court and if re-trial still refused, defendant may apply to the Supreme Court by asking leave to file petition of error. If this motion is granted, the Supreme Court then reviews the case, but only as to the points to which exceptions were originally made, such as weight of evidence, competency and admissibility of same, charge to the jury, application of the law. If court regards any of the exceptions sufficiently well taken, case is remanded to the trial court for further proceedings. The Governor of the State has power of commutation and pardon. This power rests alone with him. But a Board of Pardons consisting of four members appointed by the Governor, exists for the purpose of examining applications for pardon, and such board considers said applications and recommends to the Governor such action as the board thinks the case deserves at the hands of the Governor. The function of this board is purely advisory, the Governor may act and consider the application entirely independent of the board.

Concerning the proposed provision for appeals as given in the Section 748 of your letter, it would seem to be a most wise, impartial and just law. There is much discussion as to whether the Governor of the State should have absolute pardoning power. It has not, in the main, been abused in this State, but in some states unquestionably, this unrestrained power has been exercised to a degree exceedingly injurious to the ends of justice and public welfare. Trusting that this letter satisfactorily answers your inquiry, I am

Very respectfully,

E. O. RANDALL.

STATE OF MASSACHUSETTS.

Through the kind courtesy of the Hon. Walbridge A. Field, Chief Justice of the Supreme Judicial Court for that

Commonwealth, I am enabled to give the law regulating appeals in criminal cases:

Every person indicted in any Court of Quarter Sessions, or in any county Court of Oyer and Terminer and General Jail Delivery, may remove the indictment, and all proceedings thereon, or a transcript thereof, into the Supreme Court, by a writ of certiorari, or a writ of error, as the case may require; Provided, That no such writ of certiorari, or writ of error shall issue, or be available to remove the said indictment and proceeding thereupon, or a transcript thereof, or to stay execution of the judgment thereupon rendered, unless the same shall be especially allowed by the Supreme Court, or one of the judges thereof, upon sufficient cause to it or him shown, or shall have been sued out, with the consent of the Attorney-General; which special allowance or consent shall be in writing, and certified on the said writ.*

Upon the trial of any indictment for murder or voluntary manslaughter, it shall and may be lawful for the defendant or defendants to except to any decision of the court upon any point of evidence or law, which exception shall be noted by the court, and filed of record as in civil cases, and a writ of error to the Supreme Court may be taken by the defendant or defendants, after conviction and sentence.†

No such writ shall be allowed, unless special application be made therefor, and cause shown, within thirty days after sentence pronounced; and if the Supreme Court be sitting in banc in any district, the application shall be made, and cause shown there; if the said court be not sitting, application may be made to, and cause shown before one of the judges of that court, and upon the allowance of such writ, the said court or judge shall fix a time and place for hearing the said case, which time shall not be more than thirty days thereafter; if the said court shall be at that time sitting in banc in any district of the State, the said court or judge, upon the allowance of any such writ, shall make all such proper orders, touching notice to the Commonwealth, and paper-books, as may be considered necessary.‡

Upon the affirmance of the Supreme Court of the judgment in any case, the same shall be enforced pursuant to the directions of the judgment so affirmed, and the said court may make any further order requisite for carrying the same into effect; and if the Supreme Court shall reverse any judgment, they shall remand the record, with their opinion, setting forth the causes of reversal, to the proper court for further proceeding.§

No writ of error or certiorari, in capital offences, shall be issued from the Supreme Court to any Court of Oyer and Terminer and General Jail Delivery to remove the indictment, record and proceedings to the Supreme Court for review, after twenty days from sentence, unless specially allowed by the Supreme Court, or a judge thereof.||

In all cases of murder in the first degree, removed into the Supreme Court under the provisions of the first section of this act, or now pending

*Act of March 31, 1860, § 33. (Brightly's Purdon, 795, § 40). P. L., 439.

†Id. 533. (Brightly's Purdon, 796, § 41).

‡Id. 359. (Brightly's Purdon, 796, § 43.)

§Id. § 61. (Brightly's Purdon, 796, § 45.)

||Act of March 24, 1877, § 1, (P. L. 40). Brightly's Purdon, 797, § 48.

in the said court, it shall be the duty of the judges thereof to review both the law and the evidence, and to determine whether the ingredients necessary to constitute murder in the first degree shall have been proved to exist; and if not so proved, then to reverse the judgment and send the same back for a new trial, or to enter such judgment as the laws of this Commonwealth require.*

Judge Oliver Wendell Holmes, Jr., one of the Associate Justices of that Court, says in regard to the power conferred upon the Canadian Minister of Justice, in a letter to me:

My impression is that there would be many difficulties here in the way of such legislation; and it does not commend itself to me.

A judge of the Superior Court could speak with more experience on this matter.

In Massachusetts, the judges of the Supreme Judicial Court does not preside at criminal trials in the first instance as in England. That body is a Court of Appellate Jurisdiction only in criminal cases. In this respect, like the Court of Appeals in the State of New York, and in many other American states.

STATE OF WASHINGTON.

Through the courtesy of ex-Chief Justice John P. Hoyt, of the Supreme Court of this new State, I am enabled to give the criminal practice there in cases of appeal. Judge Hoyt writes as follows:

SEATTLE, WASH., March 24th, 1897.

Hon. Clark Bell, No. 39 Broadway,

MY DEAR SIR:—Your favor of the 19th inst. at hand. You will see by this letter head that I am not now Chief Justice of the Supreme Court of this state. I will however briefly express my views upon the questions asked by you. Our statute gives the right of appeal to the defendant in all classes of criminal cases. To this I have no objection, though I believe it would be better if the right was not given where the prosecution was for a misdemeanor or lesser grade of crime. It also gives an absolute right to a stay of proceedings and, except in capital cases, allows the defendant to go at large on bail pending the appeal. To this I object, I think there should be no stay except in capital cases, certainly not without a certificate of probable cause from the Judge who tried the case, or one of the Judges of the Appellate Court. As to the provision of the laws of the Dominion of Canada, of which you sent a copy, I would say that I believe it to be a beneficent provision under the system prevailing in Canada and England, but am not so sure that it would work well in this country. If I can give you any further information upon the subject I should be glad to do so.

Very truly yours,

JOHN P. HOYT.

*Act of February 15, 1870, § 2. (P. L. 15.) (Brightly's Purdon, 797, § 49.)

STATE OF CALIFORNIA.

I am indebted to the Hon. W. H. Beatty, Chief Justice of the Supreme Court of California, for a statement of the existing practice in that State. He writes as follows:

SAN FRANCISCO, March 25th, 1897.

Clark Bell, Esq., Editor Medico-Legal Journal, New York,

DEAR SIR:—In reply to your letter of March 17th, I will say that the provision of the Criminal Code of the Canadian Dominion therein quoted seems to me to be a very wise and sensible provision, and a better rule than the remedy by appeal under the criminal practice of this State, for the reason, principally, that it enables the Minister of Justice in determining whether or not to award a new trial, to take into consideration evidence discovered subsequent to the judgment of the trial court, whereas our practice confines the examination by the Supreme Court conclusively to matters embodied in the record, and occurring prior to the judgment.

It is difficult to give a brief statement of the principal features of our criminal practice in the compass of a letter, or even of that part of the practice which relates to appeals and new trials, and to which I understand your inquiry to be limited.

The proceedings in criminal trials in this state up to verdict are, with important modifications, such as they are at common law. With respect to new trials and appeals the defendant charged with a felony is allowed after verdict, and before judgment, to move for a new trial. The motion must be made and must be determined before judgment. The grounds of moving for a new trial are various,—errors in the proceedings of the court, from the drawing of a jury until submission of the cause; newly discovered evidence; misconduct of the court, jury, or prosecuting officers; and various other grounds. The motion is supported by affidavits as to any matters not within the knowledge of the court; but as to all matters occurring at the trial, it is based upon the knowledge of the Judge. If the motion is granted, the State may appeal, and, if the State appeals, a bill of exceptions is prepared and signed by the Judge, showing the case upon which the motion was made, and upon which the court acted. If the motion is denied, a bill of exceptions is prepared in the same way. Our statute allows the defendant to appeal, not only from the judgment but from the order denying a new trial. The appeal from the order denying a new trial is entirely useless and superfluous, because, as the order is always made before the judgment, it could as well be reviewed on an appeal from the judgment.

On the appeal from the Superior to the Supreme Court the questions presented relate to the regularity of the proceedings in the court below, and, if it is found that the substantial rights of the defendant have not been accorded him, the judgment and order denying a new trial are reversed, and the cause remanded for further proceedings. But, as above stated, the court cannot consider anything except the record, and this excludes evidence that may have been discovered after the judgment.

The discretionary power conferred by the Dominion Code upon the Minister of Justice seems to enlarge his power in this respect, and to be an improvement on our system.

Regretting that lack of time prevents me from giving a fuller statement of our practice, I remain

Very respectfully,

W. H. BEATTY.

STATE OF OREGON.

Mr. Clark Bell, Editor of the Medico-Legal Journal, 39 Broadway, New York City.

DEAR SIR:—Your letter of March 12th has been returned to the Executive Office by the Attorney-General, with the statement that he is exceptionally busy, and therefore unable to furnish such a reply as you would probably desire. Hence the Governor directs me to state, that the "procedure in criminal cases in the State of Oregon, particularly where the death penalty is involved," is similar to the practice in a great majority of the States of the Union.

The Section which you quote from the Canadian Criminal Code of 1892, in reference to "applications for mercy to the Crown, and an order of the Minister of Justice for a new trial," etc., has been brought to the attention of Governor Lord, who expresses the view that it is a wise provision, and one that will seemingly promote justice.

Regretting that I am unable to furnish a longer reply, I remain

Respectfully yours,

W. S. DUNIWAY, Private secretary.

NORTH CAROLINA.

Judge Walter Clark, Justice of the Supreme Court of North Carolina, replies to my letter as follows:

RALEIGH, N. C., May 15th, 1897.

Hon. Clark Bell,

MY DEAR SIR:—In reply to yours just to hand: Any person convicted of a criminal offense in this state has the *right* of appeal, if he can give a small appeal bond, usually \$25. If he cannot give the bond, he is allowed to appeal *in forma pauperis*—without bond—upon his affidavit that by reason of poverty, he is unable to give the bond, that he is advised by counsel that he has good ground of appeal and that the appeal is in good faith. He is then allowed to appeal, and pays no costs. Thus practically the right of appeal is unrestricted.

Very truly yours,

WALTER CLARK.

MISSOURI.

Judge Sherwood, one of the Justices of the Supreme Court of the State of Missouri replies to my letter as follows:

CITY OF JEFFERSON, June 6th, 1897.

Clark Bell Esq., New York,

DEAR SIR:—Replying to yours of the 13th ult., I have the following to say: Appeals may be had in this State to this court in all judiciary

cases upon making affidavit, praying for such appeal. The order for appeal is thereupon made, but it does not operate as a stay of execution, except in capital cases, unless recognizance be entered into.

Appeals to the Courts of Appeal in misdemeanor cases are obtained in a similar way.

Under our State Constitution, after affirmance of judgment in our court, or after judgment in the trial court, and term expired, there is no power lodged anywhere to grant a new trial.

The only thing that can be done then, is to apply to the Governor for a pardon, total or partial. Where we have a Governor *in fact* as well as *in name*, there is not likely to arise any abuse under our system, but where we have *little weaklings*, as we sometimes have, great abuses often arise, caused by foolish interference on the part of such little weaklings, and then the law is brought into contempt. Perhaps under a different system from ours, Section 748 might work well.

Respectfully,

T. A. SHERWOOD.

I have not the space to give the views of Judges of all the American States. Enough have responded to show that as a principle the right of appeal in every State and Province on the American continent, in capital cases, exists as a right to the citizen, in some form or another.

This is quite outside of and independent of the pardoning power, or the commutation of a sentence, which forms no part of the judicial power, but is an exercise of executive clemency. In nearly every American State this is vested in the Governor as the chief executive power of the State, and where Boards of Pardon are created they are always as aids and parts of the exercise of executive clemency, and never in any sense a judicial act.

This power, in the Government of the United States of America, is vested in the President of the United States and is an exercise of executive clemency.

The present English system, reforms of which are now under consideration, denies this right to the citizen, and deprives the trial court of the power to review the acts of a trial Judge, or to correct even an acknowledged error of its own administration.

There might be an objection raised, to appeals in criminal

cases, that has not been heard, from English judges and lawyers; and that is, that appeals might work to defeat justice and prevent the due and timely punishment of criminals.

That their free use would result, or might do so, in the failure of proper punishment for crime.

The laws of some of the States and the delays of appeals may have resulted in the escape of criminals.

Conceding this as of occasional force, the old maxim of the law was, that better ten guilty persons escape than that one innocent suffer.

A wrongful conviction of an innocent person under the English system of to-day, however, is sometimes without remedy or redress, and where the simple will of one official, like the Home Secretary, can keep an innocent person in perpetual confinement, who is believed by the majority of all the people of both countries to be innocent, as in the case of Mrs. Florence Maybrick, without remedy or redress, under English law, creates greater distrust in all thoughtful minds, than would the escape of many guilty persons from a just and well-deserved punishment by the law's delay on appeals.



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THE SUB-CONSCIOUS MIND. SUB-LIMINAL CONSCIOUSNESS. ✓

BY CLARK BELL, ESQ., LL. D., PRESIDENT INTERNATIONAL MEDICO-LEGAL CONGRESS, OF NEW YORK.

Some confusion exists in the minds even of psychologists, as to the term "sub-conscious" as applied to the mind of man, and it has, as so applied, been the subject of much speculative thought.

Webster, the great American lexicographer, who has no superior in the role, defines "conscious" thus:

1. Possessing the faculty or power of knowing one's own thoughts or mental operations.

"Thus man is a *conscious* being."

2. Knowing from memory or without extraneous information "as I am conscious of the fact."

"The Damsel then to Tancred sent,

Who *conscious* of the occasion feared the event."

He thus defines "consciousness."

1. The knowledge of sensations and mental operations, or of what passes in one's own mind; the act of the mind which makes known an internal object.

"*Consciousness* is thus, on the one hand, the recognition by the mind or 'Ego' of its acts or affections; in other words the self-affirmation that certain modifications are known by me, and that these modifications are mine" *Sir W. Hamilton.*

2. Immediate knowledge of any object whatever.

"Annihilate the *consciousness* of the object, you annihilate the *consciousness* of the operation." *Sir W. Hamilton.*

Worcester's definition of conscious is:

1. Knowing one's own existence by thought or what passes in one's own mind.

"Among substances, some are thinking or *conscious* beings. *Watts.*

2. Having knowledge of anything; apprized; aware; sensible.

"We are *conscious* of that in which we ourselves have been concerned." *Crabb.*

and of "consciousness:"

1. The state of being conscious; the perception of what passes in one's own mind.

"If spirit be without thinking, I have no idea of anything left; therefore *consciousness* must be the essential attribute." *Locke.*

"Once admit that after I have perceived an object, I need another power termed *consciousness*, by which I become cognizant of the perception." *Morell.*

Read at American Med. Asso. at Philadelphia, Section on Neurology and Med. Jurisprudence; at International Medical Congress, Section on Med. Jurisprudence, Moscow, Russia, Aug., 1897; at Section of Mental Diseases, British Med. Asso., Montreal, Canada, Sept., 1897, and before the Medico-Legal Society, October, 1897.

There has been a tendency latterly to speak of a state beneath, or under, the state hitherto known as consciousness; and some have claimed that it had almost independent action, beneath the consciousness and sometimes called "sub-conscious or sub-liminal consciousness."

The terms are not well defined. They are not recognized by the lexicographers.

Is there a consciousness beneath the threshold of our ordinary knowledge of our own thoughts and actions outside of and independent of the former?

Have we an inner consciousness that acts independent of the outer, and usual perception? Is it a storehouse of the memory, of acts, thoughts and volition, peculiar to itself, and not directly related to what has been hitherto believed to be the normal consciousness of man?

Is it really beneath the threshold of our thoughts regarding ourselves and our action?

A school of psychologists have arisen who believe in the duality of the mind, and who regard the phenomena of the perceptions as manifested in subliminal methods, as an indication of consciousness, which acts without apparent knowledge of the normal conscious mind, and apparently without any known connection with it; although the border lines are not sufficiently defined to be recognizable to our ordinary perceptions.

The memory of events in the sub-conscious mind may be acute, or the reverse, in the ordinary everyday consciousness, or *vice versa*.

If human consciousness marks, like the camera, a record of each event in a human life which is registered in the memory, as most psychologists would concede; depending on the ability of the memory to recall it at will in each mind, then the registered record of every life lies dormant, so to say, in each consciousness. An incident; an event;

a train of thought even, may awaken the action of the memory and recall, like the tracings of the camera, the whole exhibit, with all its color, environment, sound, and action. It might lie dormant throughout a long life, and be recalled after years of apparent oblivion.

In the sub-conscious state this registry may be more active, and unrevealing, to the conscious mind.

Much of the mysteries of telepathy, of thought reading, of the phenomena called spiritualistic, unexplainable by any known scientific knowledge, is believed by some to be due to this sub-consciousness, and for which Mr. Meyer has invented the name of "Sub-Liminal," to define a state not yet recognized by science,—the lexicographers have not recognized it, the world of science has not adopted it, but it is in use and is a proper subject of investigation.

With a view of opening the discussion of this very interesting subject, I have believed that it would be of interest to both professions and all students of psychological investigation, and I accordingly sent the following communication to various eminent Psychologists, members of the Medico-Legal Society:

"MY DEAR SIR AND COLLEAGUE :

Will you be so kind as to favor me with your definition of what is sometimes called the 'Sub-conscious mind'?

We often hear the term 'Sub-liminal consciousness.' How would you define that, and what is the distinction you make between the two subjects?

The first of these will be the subject of a discussion before the Society and perhaps before the Section, at its next meeting, so that an early reply will greatly oblige.

I do not ask for an extended article, but only a brief statement, which might be classed as a definition and a contrast between the two subjects.

I remain, very faithfully,

CLARK BELL."

To this letter I received a large number of replies some of which I have thought would add interest to the subject and the discussion.

The first is from Professor Sudduth, the Chairman of the Psychological Section of the Medico-Legal Society:

NO. 100 STATE STREET, CHICAGO, ILLS.

MR. CLARK BELL, Esq.,

Dear Sir and Friend:—Your esteemed favor is at hand and in reply would say that it is the old question of terminology. From time immemorial man has struggled with his modes and manners of expression, especially in the domain of mental phenomena. Let us see whether we cannot bring order out of chaos, light out of darkness in this instance.

In the first place, what is consciousness? "Conscious," from *Con*, together, *scio*, aware. The derivation of the word indicates an indeterminate state—a comparison of conditions and feelings, and such it is. There are degrees in consciousness and we can only know or realize the particular state or condition in which we find ourselves by comparing it with some previous state or condition. The term conscious is generally used, as representing a state opposite or opposed to unconsciousness, and supposed to be normal state of man—a state in which he is able to divine and interpret his sensations—an internal perception of external conditions that relate specially to him—a condition in which he is able to cognize himself—not always positive or definite, however, as witnessed by the following "classical" couplet:

"Am I I, or am I not I?
If I am not I, who in h—I am I?"

Formerly the proposition "to" was used with the word; now more commonly we see "of" or a clause or sentence introduced by "that."

So much for the derivation and meaning of the root from which the word—conscious-ness—is derived. Now, as to the full word under consideration. It has a somewhat broader signification, including not only an internal recognition of our external sensations, but the ability to sense one's relations, external, internal and spiritual as well. Thus, we have three states of consciousness: objective subjective and super-consciousness.

The objective is generally spoken of as normal, because it relates to our material life, has to do with "common sense" relationship, while the subjective has to do more with our "feelings," and here again we are in trouble, for no two writers use the latter word in the same sense. Some English writers have bodily adopted the German word *Defuhl*, while others hold objective sense relationships. Still others have associated the term "self," as in self-feeling, to cover conscious appreciation of self or subjective consciousness of our emotional life as opposed to our objective sense relations.

In this discussion, however, let us take the term in its good old-fashioned indefinite sense as covering our intuitions, objective and subjective, i. e. our feelings. Sub-conscious, then relates to that part of our nature, that operates beneath, or beyond the threshold of consciousness, and only comes above the threshold at special and peculiar times. The term "*subliminal self*," as far as I know, originated with and has been mostly used in the reports of the Society of Psychical Research, and has reached little further. Certain it is that it has not come into common use in general psychological literature. We cannot do better, therefore, in seeking for a definition for the term than to permit Mr. Myers to speak for himself

in its behalf. In an article on the "subliminal self" published in December, 1895, issue of the Transactions of the Society for the Psychical Research. pp. 334, he begins as follows: "In a series of chapters dealing with the existence and faculties of a subliminal self," a part of our mind or faculty which lies below the threshold of our ordinary consciousness, etc., etc. The term as used by him is similar in its application to our term sub-consciousness and might be written thus, "sub(liminal) consciousness," so as to avoid confusion, if we were so minded. But, as the term has not been generally adopted, it seems to me better to drop it altogether and confine ourselves to the simpler one, "subconsciousness," which has now most wholly displaced the term "unconsciousness," that formerly held sway as relating to mental processes that took place beneath the threshold of consciousness

Much unnecessary confusion would thus be avoided, for even Mr. Meyers does not confine himself to the use of the subliminal in all his writings, neither can it be found in our modern dictionaries.

As to the other divisions of "consciousness," for which Mr. Meyers has coined the term "supra liminal," it relates to the transcendental idea of the pure *ego* and does not come within the scope of this paper, which has to do with mind as ordinarily understood, i. e., objective and subjective. I cannot, therefore, do better in closing, than to present my definition of mind, which after the rather full discussion of the term consciousness that is generally admitted to be a state of mind, will be more readily understood.

Mind is the intelligence within man, natural and acquired, that makes him what he is intellectually, morally and physically. The "natural" mind is an inheritance and operates beneath the threshold of consciousness as consciousness only comes through knowledge based upon comparison of sense relationships. Subconscious mental activity is in operation at all times, however, and from the very inception of being, while objective or "acquired" mental activity only comes with age and understanding. The term age, as here used, relates to maturing processes, not to maturity.

The objective mind or acquired intelligence is the result of the sum total of sense experience, and has its seat in the sensorium where different centres for the several senses have been definitely located.

The subjective or natural intelligence, has no special seat but permeates all portions of the body, and controls the so-called unconscious functional activities, while the objective mind directs the conscious or acquired functions. The objective mind also locates what has been termed "common sense," while the subjective mind forms the seat of the higher or "uncommon sense."

Thus it will be seen that subliminal consciousness is a state of the natural or subjective mind and as such is to be clearly differentiated from objective and superconscious mind.

Yours to command,

W. X. SUDDUTH.

Prof. James, of Cambridge, writes:—

CAMBRIDGE, March 25th, 1897.

DR. CLARK BELL,

Dear Sir:—Both terms, "sub-conscious mind" and "subliminal con-

sciousness" seem to me to be vague and denotative, rather than positively defining. They designate the source of acts, whatever it was, which seem positive and intelligent, (as involving perception or caprion) and which nevertheless do not spring from the usual clear consciousness with memory attached.

Probably all sorts of different phenomena will hereafter be found to have been covered by these rude phrases. I think the term *sub* is unlucky, since some of the phenomena seem *super* in respect of the cognitive powers displayed in them.

Adopting the metaphor of the "field of consciousness," with its "focus" strongly attended to, and its "margin" dimly realized, I have been in the habit of talking of extra "marginal consciousness." This seems to escape the narrowing implications of "sub."

Truly yours,

WM. JAMES.

Prof. Hyslop says:—

COLUMBIA COLLEGE, New York, March 23rd, 1897.

MY DEAR MR. CLARK BELL:

In reply to your inquiry about the meaning of "subliminal consciousness," I can only say that it is not easy to give a short definition of it which will convey what it means to those who use it scientifically. Its import is largely relative to a doctrine which the scientific mind does not wish to accept and yet feels, that the phenomena can not be well classed with pure physiological functions, without involving conscious action in the same category. But, first, understand that we who use the expression *do not* mean by it, nor by "unconscious mind," that they are *two subjects*. That is precisely what we reject. We are merely in the position of those who deny the Cartesian position, that the only action of mind or the subject is the conscious stream which we ordinarily know and remember. Hence when we refer a phenomena to "subliminal consciousness" we mean to refer the action or function to the *same subject* as the conscious stream but call it "subliminal" because it is below the threshold, less intense, or not brought within the memory of the normal stream. The idea is to suppose that the same subject is capable of two or more independent streams of action, the normal one being called "supraliminal" because it is remembered, and the general stream, and the other subliminal because it is separated from the supraliminal and does not enter into its memory. Of course it is a name which conceals a good deal of ignorance, but it excludes the conception of ordinary brain functions on the ground that the action is so much like consciousness, that we must either consider consciousness a brain function, or classify subliminal action under the head of phenomena involving some kind of intelligence. In many cases it represents the facts and experiences of the subject but unrecognized. That is, it is consciousness *minus* the memory of its connection with the ordinary stream. This may not be true in all cases, but it suggests the propriety of the term for recognizing the sameness of the subject with a capacity for a variety of independent series of mental states.

Very truly,

J. H. HYSLOP.

Dr. James R. Cocke, a writer of note says:—

March 22nd, 1897.

MR. CLARK BELL,

Dear Sir:—In reply to your request for my definition of the sub-consciousness mind let me say, that to make it clear without using psychological terminology would be difficult.

The three fundamental conditions which constitute mind are, knowing, willing and feeling. These three elements make up the sum total of the mind which take cognizance of, and act upon the external objective phenomena of the universe.

The subliminal consciousness is that form of intelligence possessed by the nervous system, which receives from the upper consciousness objective re-presentation storing and associating them, for the use of the personality.

The sub-conscious mind is that part of the subliminal consciousness which knows, wills, and feels, independently of that upper consciousness whose outer relations are so close to the cosmic phenomena of the universe.

The terms mind and consciousness are not interchangeable. There can be, metaphysically speaking, no mind without some form of consciousness. Conversely consciousness may exist as it is one of the three elements necessary to constitute the mind. It is conceivable that one might know a thing as a perceived sensation, without being able to act upon it or to have a will about it.

This "subliminal consciousness" of which we hear so much is probably the product of the lower centres of the nervous system, which during active conscious life we are ordinarily not aware of, owing to cerebral inhibition, for the time, in abeyance, the lower centres of the nervous system trained ordinarily to a form of automatism, taking up and carrying on the ordinary functions of the mind.

Trusting I have made myself clear, I remain,

Yours very sincerely,

JAMES R. COCKE.

Prof. Paul Carus, replies:—

LA SALLE, ILL., March 27, 1897.

DR. CLARK BELL,

39 Broadway, New York City.

My Dear Sir:—In reply to your question concerning the two terms "subconscious" and "subliminal" I would say that I have not as yet seen a distinction made by any psychologist, and it would be quite proper to use them synonymously; however, there is a difference between them which may occasionally be of importance. By "subconscious" I understand all those dim feelings which are not distinct but coalesce into the general tone of the psychic organism forming the basis of the conscious soul and being commonly called *coenæsthesis* or *Gemeingefühl*. The main part of subconscious states, which merge into the coenæsthesis of the soul, can never arise into the clear comprehension of consciousness. It is the product of the race-history of the individual, and is based mainly on heredity, influenced by physiological changes. Among the subcon-

scious states however there are some which are superadded through the experience of the individual, and which may or may not, as occasion will demand, rise into consciousness. It is these states which I would call "sub-liminal." That intensity of feeling which we call consciousness is always limited to one idea, or one relation between two or several ideas, and the rising of ideas into consciousness is governed by the law of attention which, (as Ribet well explains) is either involuntary or natural, or voluntary or artificial. The concentration of attention is either forced upon a being from the outside by the presence of objects toward which it is directed, or it is guided by a medium plan, which latter condition, is of course possible only in the higher developed animal, in man. Thus, while all subliminal states are "subconscious," I would call only those subconscious states "subliminal" which according to their nature may at any moment [if only the necessary provocation appears,] pass over the threshold of consciousness and become the object of attention.

Hoping that the Medico-Legal Society is prospering, and wishing you the best success in your important and useful work, I remain, with kind regards,
Yours very truly,
P. CARUS.

Prof. J. T. Eskridge, a leading Neurologist, says:

DENVER, COLORADO, March 25th, 1897.

MY DEAR MR. CLARK BELL:—

Your communication, requesting my definition of what is sometimes called the "subconscious mind" and the "subliminal consciousness," and what distinction I make between the two states, has just reached me.

Subconscious mind or subconsciousness is generally employed to define that state in which the mind is, or may be by suggestion, the active possessor of all passed acquired knowledge. Such a state is found in some cases of somnambulism and in the state of hypnosis of some persons.

Carpenter, Bastian and others have confused this state with a condition of disturbed or confused consciousness found after traumatism to the head, certain amnesic states following alcoholic indulgence, etc.

Binet is not always clear in his work on "Alterations of personality" in separating the subconscious state from states of disturbed consciousness arising from mental confusion.

Is "subconsciousness" or "subconscious mind" a good definition for the mental state in which the mind is, or may be by suggestion, the active possessor of all passed acquired knowledge?

Consciousness, as we ordinarily understand it, is a condition of mind in which we have a summary of passed experiences, and are able to correlate this, with the impressions made upon our sensorium at the time to which our mind is actively directed.

Subconsciousness means less than consciousness, but we have seen that in a subconscious state, we knew infinitely more of the passed, than we do during our healthy states of consciousness.

It seems to me that "Subjective consciousness" as used by Hudson in his work entitled "The Law of Psychic Phenomena," better expresses the mental state commonly designated "Subconscious mind," or "subconsciousness."

"Sub-liminal consciousness has seemed to me a pompous or stilted definition for "subjective consciousness."

I have hurriedly given you a few off-hand impressions that I have gathered from the works of various writers.

I wish that I could be with you to hear your discussions of these difficult and ill understood subjects.

I am, very truly yours,

J. T. ESKRIDGE.

Prof. U. O. B. Wingate, an officer of the Section writes :

STATE BOARD OF HEALTH,
MILWAUKEE, Wis., March 23, 1897. }

CLARK BELL, ESQ.,

39 Broadway, New York:

My Dear Sir and Colleague :—Yours of the 19th inst., asking me to give my definitions of the words "sub-conscious mind" and "subliminal consciousness," received and contents noted.

In reply, I have to state that in my judgment the two words, sub-conscious and sub-liminal, are nearly the same in meaning but vary in degree, the word subliminal being a degree below that of sub-consciousness. We mean by a sub-conscious mind, a mind that is not fully conscious but faintly conscious, or a mind without attendant consciousness or conscious perception; sub-consciousness is a mental state or process similar to those of which we are conscious but in which perception or mental apprehension is absent.

Subliminal, applied to the mind, means a state of mind that is beneath the threshold of consciousness; latent; and is applied to supposed sensations or other physical changes so weak that we are not conscious of them.

This is my conception of the meaning of the terms.

I understand that subliminal may be applied to sensations or other psychical changes so weak that we are not conscious of them, in other words, such a state is on the border-line of consciousness, but not yet attained to consciousness. I should say that a somnambulist was in a state of mind that might be considered subliminal. He is not conscious of his acts but is able to perform certain functions that are devoid of consciousness, and this may come through force of habit, or other causes, in a state in which he is not conscious but is on the border-line of sub-consciousness.

The sub-conscious mind is in a degree other than subliminal, for such a person has passed the threshold of consciousness, although his consciousness is weak, barely exists, but does exist, but is below the ordinary stage of true consciousness. A person just awaking from the somnambulistic state, before arriving to full consciousness, may be in a state of sub-consciousness. In other words, a condition of mind which is sub-conscious is between the subliminal and the conscious. A person just recovering from the effects of an anæsthetic may be in a sub-conscious state of mind before full consciousness is restored. A person may be able to perform many functions guided by habit, or what not, yet not conscious of his acts, and in such a state I would consider him to be in a subliminal state, not conscious but just on the edge of becoming sub-conscious, and from that state of sub-consciousness he may pass on to full consciousness.

I know of no clearer way in which I can express my ideas, relative to

the true meaning of these two terms, although I could cite more examples should you desire me to go more deeply into the matter.

Faithfully yours,

U. O. B. WINGATE.

Prof. Baldwin, of Princeton, writes :

PRINCETON, N. J., March 28, 1897.

Dear Sir:—The two phrases, "sub-conscious mind" and "subliminal consciousness" are but alterations or expressions for some sort of a lower conscious agency in us, acting in relative independence of our major personal self. Subliminal consciousness is a term of Myer's who has a splendid theory of the being and action of such a sub-conscious self. "Sub-conscious mind" does not carry necessarily the implication of personality. The facts on which the whole view rests are well put by Binet in his "Alterations of Personality," and in my "Introduction" to that work (From D. Appleton & Co., N. Y.,) I give some literary references and indicate the direction of your views.

Yours very truly,

J. MARK BALDWIN.

Prof. A. A. D'Ancona, M. D., 1022 Sutter Street, San Francisco, writes:

March 28, 1897.

CLARK BELL, SECRETARY MEDICO-LEGAL SOCIETY, N. Y.,

Dear Sir:—Replying to your favor of recent date, I would say that in my opinion the expression the "sub-conscious mind" in the present state of Psychological science is a group of words without meaning.

Up to within recent years the only method followed in the study of mental process was an appeal to the consciousness. An appeal to the consciousness gives rise to the illusion that the sun revolves around the earth. The same method of introspection must of necessity give rise to a similar illusion, that the consciousness is the central sun about which the mental faculties revolve. The extensive realm of unconscious cerebration becomes a *terra incognita*. To explain the innumerable phenomena of unconscious cerebration resort is had to the theory of a second mind controlling mental processes, that are not attended with consciousness, the so-called "sub-conscious mind."

Modern methods of psychological research have shown that the consciousness, instead of being essential, is merely supplementary; that there is no sharp line of demarcation, separating consciousness from unconscious mental action; that we pass not suddenly as is supposed by the believer in the theory of the sub-conscious mind, but by insensible gradations, from acts that are fully conscious, to acts entirely unconscious; that the consciousness, prominent in acts such as the learning of a trade, becomes gradually less and less active, as the movements become fixed by prolonged habit, and by inheritance; that mental actions unattended with consciousness, do not differ in essence, from mental actions, when consciousness is superadded.

Very truly,

A. A. D'ANCONA.

Dr. H. S. Drayton, a Psychologist of experience, writes:

OFFICE, March 30th 1897.

DEAR MR. BELL:—I have had very little time to myself since receiving your note anent the "subliminal" and the "sub-conscious," and cannot jot down a few lines at the present time.

The subject is of course much involved in hypothesis as yet; although many psychologists think that we are within view of the facts. Doubtless you have consulted the proceedings of the London Society for Psychological Research, where you will find a voluminous array of propositions and phenomena bearing upon the sub-activities of the mind and brain. Referring to the June number of proceedings above mentioned, I find in a "Glossary" by Mr. F. W. H. Meyers, the following definition of "subliminal."

Of thoughts, feelings, etc., lying beneath the ordinary threshold (*limen*) of consciousness, as opposed to *supraliminal*, lying above the threshold. Excitations are termed *subliminal* when they are too weak to rise into direct notice; and I have extended the application of the term to feeling, thought, or faculty, which is kept thus submerged, not by its own weakness, but by the constitution of man's personality. The threshold (*Schwelger*) must be regarded as a level above which waves may rise, like a slab, washed by the sea, rather than as an entrance into a chamber.

The sub-conscious mind relates to the subliminal as to a sphere of being and acting, that is, beyond or apart from the ordinary sphere of recognized consciousness. The mental processes of the subliminal mind are in a great measure similar to those of the conscious mind, in kind, while they may differ and exceed them in quality and degree.

Somnambulism, hysteria, trance-form states, etc., whether hypnotically induced, or by other causes, supply a vast amount of phenomena in illustration of the sub-conscious action of the faculties of intellect and emotion. Secondary personality, the evidences of which are full enough in the records of Charcot, Janet Richet, Braid, Binet Pitres, Battey, etc., is a product of the sub-conscious mind, brought to view through inductions of the somnambulistic state.

The attempt to define somnambulism in terms of rational psychology leads to the conclusion, seemingly necessary, that we are dealing with a special form of mental action. Professor James, of Harvard, feels compelled to acknowledge that we cannot treat the phenomena of this condition as we treat ordinary states of mind.

I have been inclined to take ground in favor of the proposition that the sub-conscious or secondary mind is a potentiality in the regulation of human functions, such as digestion, circulation, respiration, the various organic secretions, reflex nerve excitation, etc., etc., and in somnambulism its power over the senses is shown in a remarkable degree by the exaggerated corresponding activity of their functions.

Yours truly,

H. S. DRAYTON.
27 E. 21st Street.

Thomson J. Hudson, author, etc., writes:

WASHINGTON, March 23, 1897.

HON. CLARK BELL, NEW YORK CITY,

Dear Mr. Bell:—I have your favor of the 19th inst., in which you ask me to give my definition of what has been designated as the "sub-conscious mind;" also to define "subliminal consciousness," and to state the distinction which I make between the two subjects.

You also say that you do not ask for an extended article, etc. I will, therefore, try to be brief.

The sub-conscious mind, is the source of that intelligence which manifests itself, when one is in a state of somnambulism, either spontaneous or artificially induced, as in hypnotism.

This definition, of course, merely touches the surface of the subject, but it has the merit of being easily comprehensible by all, who have even a superficial knowledge of the phenomena of hypnotism.

It has also been called the "unconscious mind," although it is a somewhat paradoxical term, if we accept the dicta of the old psychologists, that the whole region of mind is limited to consciousness. But even they are forced to admit, in one way or another, unconscious psychical processes; as for instance, Laycock and Carpenter in their doctrine of "unconscious cerebration," and Sir William Hamilton in his doctrine of "latent memory," and "mental latency."

Another definition of the "sub-conscious mind" which I would give, and which more nearly expresses the concrete facts, is this:

The sub-conscious mind is the source of that intelligence which is manifested, when the functions of the cortex are wholly or partially inhibited.

"Subliminal consciousness" is a term coined by F. W. H. Myers to express precisely the same mental phenomena. I give his definition in his own words:

"Subliminal:—Of thoughts, feelings, etc., lying beneath the ordinary threshold (limen) of consciousness, as opposed to supraliminal, lying above the threshold." (See proceedings S. P. R. for June, 1896, pp. 173-4.)

His definition is rather non-committal, as was doubtless intended, in regard to anything, but the bare fact that the operations of that intelligence lie below the threshold of our everyday normal consciousness.

Naturally I like my own terminology best. In my works I have employed the term "Subjective Mind" to designate the intelligence lying below the threshold of normal consciousness. I have done so for two reasons. First, because the word "subjective" expresses the exact relationship which that intelligence bears to the ordinary, normal or "objective mind," in that the subjective mind is constantly amenable to control by suggestion; that is, by the suggestions of the objective mind. It is, therefore, normally in a condition of subordination to the objective mind. That is to say, it is "subservient, as subjective compliance." (Standard Dictionary.)

My second reason is that all lexicographers agree that the term applies or refers, to the mental states of the age. And I hold that the ultimate age is that soul, and that the subjective mind is the mind of the soul. In this, however, the authority is not so clear, as it involves a new definition of the term. But the first reason is all-sufficient since it defines

the salient fact—the observable demonstrable fact of the relationship between the intelligence sought to be described, and the intelligence of normal consciousness.

I beg pardon for inflicting so long a letter; but it is a subject that particularly interests me, and I am apt to grow garrulous when it is broached.

Sincerely yours,

THOMSON J. HUDSON.

R. Osgood Mason, a Neurologist and Author, says:

CLARK BELL, Esq.,

Dear Sir:—In reply to your request for my idea regarding the distinction between the terms *sub-conscious mind* and *subliminal consciousness*, I would say: I consider the terms "sub-conscious mind," "subliminal consciousness" and "subliminal self" equivalent and interchangeable. Undoubtedly many persons, in some qualified way, would acknowledge their belief in a sub-conscious mind, even the school of psychologists who are limited to physiological function, in their dealings with mind, acknowledge this, and also certain automatic actions dependent upon this fact or condition; but when this sub-conscious mind is raised to the dignity of a personality, distinct from the ordinary personality, and sometimes at least possessing functions and powers superior to it, they demur; but the demurrer, it seems to me, is the result of limited observation and knowledge, regarding sub-conscious mind.

If the sub-conscious mind be mind at all, it is intelligent and conscious; and these are two important elements in *personality*, and as we have no idea that this personality is a foreign one, it follows that it is a part of one's self.

Sub-conscious, however, is not an agreeable nor a really correct adjective to apply to a personality or self, and Mr. F. W. H. Myers, Secretary of the Society for Psychological Research, has invented the term "Subliminal" to take its place, as expressing the idea that this other personality or self is, as it were, beneath the threshold of the ordinary consciousness or personality, and ready to manifest itself as occasions may offer, according to its own particular method and power; and it has no reference whatever to the quality of the said personality, and this term has of late been generally adopted by writers who have concerned themselves with this subject.

So that it seems to me that a sub-conscious mind being admitted, there remains only different grades of activity and power of this sub-conscious mind, and that these different terms applied to it are simply equivalents, and that while the term "subliminal" is not an ideal one, it is the best we have.

To illustrate definitely what the subliminal self is, allow me to bring to your notice a case reported by Dr. C. Lockhart Robertson, of London, and which appears in the current (March) number of the Journal of the Society for Psychological Research.

A lady, whom we will call Mrs. B., with her ten year old daughter A, and a servant went to a seaside place named Trinity, near Edinburgh. One pleasant Sunday afternoon, July 15th, a clerical friend from Edinburgh called to see Mrs. B. and soon asked if she had heard the particulars of a railway accident which had just occurred. She replied that

she had not heard of the accident at all, but after a little conversation she remarked, "I have had a singular nervous experience about A. this afternoon. I wonder if it could have had any relation to this accident." The experience, briefly told, was this: Between three and four o'clock in the afternoon she gave her daughter permission to go and take a walk, and as she would be alone, advised her to go to the railway garden, a little pleasant spot of green lying between the railway and the sea embankment, and frequented by nurses and children.

A few minutes after she had gone the mother seemed to hear something, as it were within herself, say very distinctly, "Send for her to come back or something dreadful will happen to her." She thought it a strange suggestion, and quite unreasonable, and paid no further attention to it. A little afterwards the same thing occurred again, the same words being repeated with greater emphasis.

Again she resisted, thinking how foolish it would be to send for the child to come away from such a perfectly secure place. She could think of nothing that could possibly happen to her, and she refused to send.

But presently the same message came the third time, in the same emphatic manner, and at the same moment a violent trembling and a great terror overwhelmed her. She hastily rang the bell and ordered the servant to go at once and bring the child home, repeating the words of warning, "or something dreadful will happen to her."

The servant thought it a strange affair and a perfectly useless and foolish errand, but she reluctantly went.

When the servant was gone the trembling and terror increased and a fear possessed her that she would never see the child again. In a quarter of an hour the servant returned with the child, safe and sound, but much disappointed at having her outing spoiled.

She was permitted to go out again, with the injunction, thoroughly administered, not to go in the direction which she had planned to go before.

Thereupon the mother's calmness returned and she felt no further uneasiness. While relating the experience to the clergyman, A. came in, whereupon he asked the child where she was intending to go when sent for by her mother. She replied she intended to go through the railway garden and through the gate leading to the seashore, and then along the shore to some rocks where she and her brother had spent the afternoon delightfully the Sunday before. In short it was at this very spot that the accident occurred, the engine and tender left the track and crashed down upon those very stones, killing three persons who were seated there.

Here was a subliminal self, alert, foretelling an event entirely beyond the reach of the senses of the primary self *reasoning* about it, and conveying the needed warning by producing the impression of hearing a voice again and again repeated.

Very truly yours,

R. OSGOOD MASON.

Prof. J McK. Cattell writes:

COLUMBIA UNIVERSITY,
IN THE CITY OF NEW YORK,
DEPARTMENT OF PSYCHOLOGY.

GARRISON-ON-HUDSON, N. Y., March 30, 1897.

CLARK BELL, ESQ., 39 BROADWAY, NEW YORK,

Dear Sir:—I do not myself make use of the term sub-conscious mind. "Subliminal consciousness." I should define as consciousness which is so indistinct that it is only known through its influence on the course of mental life. The term was I believe invented by Mr. F. W. H. Myers. It does not seem to me to be any better than the older and synonymous term sub-consciousness.

Very truly yours,

J. McK. CATTELL.

Prof. Harlow Gale, one of the officers of the Psychological Section, says:

UNIVERSITY OF MINNESOTA,
PSYCHOLOGICAL LABORATORY,
HARLOW GALE, INSTRUCTOR.

MINNEAPOLIS, MINN., April 2, 1897.

CLARK BELL, ESQ.,

Dear Sir:—In reply to your question about "sub-conscious mind," and "subliminal consciousness," you will find my view against the personification of descriptive facts or inferences, in my review of Hudson's "Future Life" in the Proceedings of the Society for Psychological Research, Vol. XII. pp. 533-4, (Part XXXI). Although "subliminal consciousness" is strictly a contradiction, an increasing number of phenomena above and below the threshold of consciousness make some term for their classification necessary, and for their purpose "subliminal consciousness" implies much less in the way of personification into a metaphysical unity than "sub-conscious mind." As soon as such facts get beyond the descriptive stage, then it seems to me we ought to try to get and find their brain connections or foundations and so avoid if possible all scientific use of mind in those matters.

As to the work of the Medico-Legal Society could I get a list of their publications in some way? In my everlasting press of work, I have not yet been able to get hold of the publications.

Sincerely yours,

HARLOW GALE.

Dr. T. D. Crothers, of Hartford, Conn., in reply to my question, says:

The "sub-conscious mind" acts independent of reasoning and sense impressions.

It is a condition underlying the conscious threshold or normal state, where reason and will are the moving impulses. One phase of the sub-conscious, is where the person is controlled by a dominant idea, so that all recognition of surroundings and time are lost, although he apparently acts in harmony with them. As in walking over rough surfaces, the ordinary consciousness absorbed in an other direction does not recognize this condition but the sub-conscious mind adapts the body to it.

Automatic acts, such as going home from work, or repeating some familiar act, which consciousness and memory do not recognize at the time, are the operations of the sub-conscious mind.

John Stuart Mill left his office, crossed the London Bridge, rode to his home, took lunch, procured some papers, returned, while carrying on a train of mental thought. Later he had no recollection of what he had done, or where he had been. The sub-conscious mind directed his movements in this. In this a second consciousness or second *ego* presides over the acts and relation of the brain to the surroundings.

This is physiological sub-consciousness. The "subliminal" is "psychical sub-consciousness," a second and complete self or consciousness with greater potentialities in some directions, than the normal self under certain conditions and influences, manifesting powers far beyond normal reason and conscious sense impressions.

This psychical or subliminal sense, takes cognizance of thought, acts, motives and conditions, away beyond the ranges of the senses and reason. What are called intentions, premonitions and psychical impressions are from the subliminal sense.

Some of the phenomena of telepathy, clairvoyance, double-consciousness, dreams and hypnotism, are clearly the operations of this sense.

Prof. Martin, of London, after the most careful study and preparation, decided to go to India in a certain official capacity. At the last moment he was impressed that it was a fatal mistake to go. The sequel proved the correctness of this impression; which was the action of the subliminal sense; the physical consciousness of life and its relations to the surroundings; impressions of unexpected events occurring at a distance and unusual lines of conduct to be followed; and premonitions of danger and death, are due to the operation of the subliminal consciousness.



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MEDICO-LEGAL SURGERY.



THE IMPORTANCE OF THIS BRANCH OF MEDICAL JURISPRUDENCE, MILITARY SURGERY, NAVAL SURGERY, RAILWAY SURGERY — ACCIDENTS ON RAILWAYS. — DAMAGE CASES. — RAILWAY SURGEONS. — THE RAILWAY HOSPITAL SYSTEM. — TRANSPORTATION OF DEAD BODIES. — HEALTH PRECAUTIONS. — CASES OF INFECTIOUS DISEASES.

Medico Legal Surgery should be considered under three separate and distinct heads: Military Surgery; Naval Surgery; and Railway Surgery.

MILITARY SURGERY.

In all countries the military surgeon forms a fixed and distinct arm of the service of the army of the nation; and its relation to medico-legal science has been well defined in the past.

Through the courtesy of Surgeon D. L. Huntington, M. D., Deputy Surgeon-General of the United States Army, the general features of the army organization of the American Military Surgeon may be stated as follows: The Army Medical Department constitutes one of the bureaus of the War Department, and is composed of one surgeon-general with the rank of brigadier-general; six surgeons with the rank of colonel and styled assistant surgeon general; ten surgeons with the rank of lieutenant-colonel, styled deputy surgeon general; fifty surgeons with the rank of major; and one hundred and ten assistant surgeons. All assistant surgeons enter the corps by competitive examination and are commissioned as first lieutenants; after five years, and upon passing successfully the required examination, they are promoted to the rank of captain. Promotion throughout the corps is by seniority. There are no regimental surgeons, but medical officers for posts, armies, and commands are detailed for whatever duty may be required.

The Medical Department of the Army also comprises the Hospital Corps, made up of hospital stewards, acting hospital stewards and privates, the number of each determined by the necessities of the service. The Hospital Corps is divided

[From advance sheets Clark Bell's 12th American Edition, Taylor's Medical Jurisprudence.]

among the several posts where troops are stationed, and in force proportionate to the size of the post.

The army medical officer of whatever grade is a regularly commissioned staff officer, appointed by the President and confirmed by the Senate, holding his commission for life unless deprived of same by sentence of court-martial. The medical officer *cannot assume command* except in his own department, but by virtue of his commission he *may command all* enlisted men like other commissioned officers. Medical officers, by virtue of commission, are entitled to sit on courts-martial, boards of inquiry, and other boards or commissions, taking their places by seniority.

Each military department is entitled to a medical officer on the department staff, known as the chief surgeon of the department, and in times of war, or of active field duty, a chief surgeon of an army, army corps, or division is detailed to duty with the general officer commanding such forces.

A more specific and detailed account of the duties, etc., of medical officers of the army is contained in the Army Regulations, U. S. A. A "Circular of Information for Candidates seeking Appointment in the Medical Corps of the United States Army" can be obtained on application to the Surgeon-General's Department of the Army. (*Vide* also Medical and Surgical History of the War of the Rebellion; Buck's Reference Handbook of the Medical Sciences, vol. iii. pp. 105 *et seq.*; Ibid. vol. ix. Supplem. 640 *et seq.*; Piecher's First Aid to the Wounded; "Index-Catalogue," Library of the Surgeon-General's Office.)

In the several American States the National Guard has attached to it the regimental surgeon as the basis of its system.

In Great Britain the Army Regulations fix the status, powers, duties, and responsibilities of the army surgeon.

THE ASSOCIATION OF MILITARY SURGEONS OF THE UNITED STATES.

In the United States of America the military surgeons of the country have united in an organization—The Association of Military Surgeons of the United States—which embraces all branches of surgeons connected with the regular Army and Navy as well as the military surgeons connected with the National Guard of the several States of the American Union. This body meets annually to consider questions connected with military surgery, and its contributions to the literature of this branch have been important.

NAVAL SURGERY.

The medical jurisprudence of naval surgery does not materially differ from that of army surgery, but it is perhaps proper to speak of it by itself. Through the courtesy of Surgeon-General J. R. Tryon, M. D., United States Navy, the outlines of that organization may be stated as follows:

The Medical Corps of the Navy is allowed by statute law a membership of 170. The corps is divided into five grades, to wit: Medical director, medical inspector, surgeon, passed assistant surgeon, and assistant surgeon, which have the relative rank respectively of captain, commander, lieutenant-commander, lieutenant and lieutenant junior grade, and ensign.

Admission to the Corps is based entirely upon merit as determined by examination before a board of medical officers, carefully selected for this purpose. A copy of circular showing scope of examination can be obtained on application to the Surgeon-General of the United States Navy. When a candidate is successful before the board, he is commissioned by the President, by and with the consent of the Senate, as an assistant surgeon, with the relative rank of ensign. After three years' trial in the service as an assistant surgeon he is examined by the Medical Examining Board for promotion to the grade of passed assistant surgeon. In the event of failure he is again examined at the expiration of one year, and should there be a second failure he is dropped from the naval service. On promotion to passed assistant surgeon a new commission is issued by the President. Promotion from the grade of passed assistant surgeon and the other higher grades is by seniority, after examination before a board of medical officers.

The rank of the members of the Medical Corps, while conferred in the same manner as in the case of the members of the line corps, is relative, and in two grades, as shown above; there may be two ranks in the same grade, depending upon promotion in the line corps.

In Great Britain the naval surgeon occupies a similar position in relation to the service of Her Majesty's Government in the department of the Navy; and the officers of both arms of the service unite in practical recognition in army and navy clubs and in the united service of both branches of the service on land and water, as also in the Dominion of Canada and the colonial dependencies of the English crown.

RAILWAY SURGERY.

Railway surgery has become by far the most important branch of surgery in its relation to medical jurisprudence, when considered in its volume and as affecting the great body of the people, especially in the United States of America. The evolution of the railway system, especially upon the North American continent (which now has more miles of railway almost than all other countries combined) has in its train, and as a necessity, wrought radical changes, to both the legal and the medical professions, and has brought nearly every inhabitant in the United States of America and the Dominion of Canada, into new and at the same time more immediate and direct communication and relation, to and with the management of railways. The railway has revolutionized commerce, manufactures, mining, agricultural production and development, and indeed every branch of human industry. All manufactures, all products, are now brought to the market by the railway. It has superseded all other methods of travel or transportation where distance is a factor, and has become to the body politic—the State—what the arterial and venous circulation is to the human structure. In 1891, the Dominion of Canada had completed and in operation 14,000 miles of railways, while the United States had 214,000 miles, including double tracks and sidings. An enormous impetus and increase has since constantly occurred. (Med.-Legal Jour., vol. xi. p. 37.) Mr. Justice David J. Brewer, of the Supreme Court of the United States, in his address before the New York State Bar Association, stated that in 1893 there was \$11,000,000,000 invested in railway property in the United States whose shareholders in this country number less than 2,000,000 persons. (Med.-Legal Jour., vol. x. p. 404.)

From an inexorable necessity, where the railways transport such vast numbers of the population, in all the varied pursuits and business of men, accidents have become a part and feature of the system; and the well-equipped railway of the present day must almost of necessity have its surgical system and its legal system. Chief Surgeon C. W. P. Brock, in his presidential address before the National Association of Railway Surgeons, in June, 1893, stated that "During the year ending June 30, 1891, 7029 persons were killed on railways in the United States, and 40,910 injured. Of these 2660 employes were killed and 293 passengers, and of the total injured

26,140 were employes." (Med.-Legal Jour., vol. xi. p. 64.) There are a few railways who have perhaps not yet recognized this as indispensable, but only a few; and it may be stated as a truism, that every first-class railway must have its legal advisers, attorneys and counsel, on the one hand, and its chief surgeon, and surgical staff, on the other. The railway that neglects to provide these two important adjuncts for its operation, is not fully equipped for its work; and without proper surgical organization it would not only pay double what it should in accident and damage cases; but would not properly provide for the care of the wounded and sufferers from accidents, of its own employes in its practical operation. The railway counsel has long been a conceded and recognized factor in railway administration; the railway surgeon is quite as necessary, almost as important, and his field of duty is an outgrowth of the railway system, which is to a large extent a part of the growth and evolution of the railway itself. The railway surgeon has, in the United States of America, become a distinct and representative part of the medical profession; and he has come to stay, as a fixed part of our railway system.

SECTION OF MEDICO-LEGAL SURGERY (OF THE MEDICO-LEGAL SOCIETY).

The growing importance of railway surgery in medical jurisprudence was distinctly recognized by the Medico-Legal Society, on September 6, 1893, by the organization of a Section of Medico-Legal Surgery, embracing railway counsel and railway, military and naval surgeons, under a chairman and twenty vice-chairmen, selected ten from each profession from the various States of the American Union. This action was based upon recommendation made in an address entitled, "Railway Surgery in Law and Medicine," made before the National Association of Railway Surgeons at Omaha, Nebraska, June 7, 1893. (*Vide* Med.-Legal Jour., vol. i. p. 37 (June, 1893); *Ibid.* vol. xi. p. 203.) Chief Surgeon Granville P. Conn, M. D., of Concord, New Hampshire, was its first chairman, and was succeeded by Chief Surgeon J. B. Murphy, M. D. of Chicago, Ill. The chief merit and usefulness of this organization lay in its uniting in its labors railway lawyers of eminence and distinction, and the leading chief surgeons of the prominent American railways, so that both sides of all questions could be studied, as well from the legal as from the surgical and medical side.

The record of the labors of this body can be best considered and appreciated by its annual reports. The first annual report, of the year 1894, showed the history of the organization, and gave its officers and a list of members, embracing twenty-eight of the leading chief surgeons of American railways, and a large number of local surgeons, military and naval surgeons, and eminent railway counsel. It defined its province and domain by the following resolution: "*Resolved*, That all questions in Medico-Legal Surgery are to be deemed within the province of the Section, including military, naval and railway surgery and the broad domain of surgery in its relation to medical jurisprudence." (*Vide* full report, Med.-Legal Jour., vol. xii. p. 471.)

The following abstracts are made from its second annual report, January 2, 1896:

"The Section is intended to embrace, beside naval, military and railway surgeons and counsel, railway managers, railway superintendents, and claim adjusters—railway officials, whether lawyers or surgeons; many of whom have already united with the body, and who are eligible to membership under the statutes of the Society. The officers of the Section are annually chosen. Three members of the executive committee constitute a quorum, and five of the board of officers of the Section. The work of the Section during the preceding year has been devoted to the advancement of the science of the medical jurisprudence of surgery in all of its branches. The papers contributed upon these branches of science have been in part published in the Medico-Legal Journal, which is the official organ of the Section, except those contributed to the Medico-Legal Congress of September, 1895, which will appear in the Bulletin of that Congress. At the November meeting, 1895, of the Section held in joint session with the Medico-Legal Society, in the city of New York, a large number of contributions were read by members of the Section, which will be published in the Medico-Legal Journal, and by authority of the joint session will be embraced in the Bulletin of the Medico-Legal Congress.

THE NATIONAL ASSOCIATION OF RAILWAY SURGEONS.

This is, so far as numbers go, the most powerful of the societies of railway surgeons.

It was founded in June, 1888, and its first president was Surgeon J. W. Jackson, M. D., elected at Chicago, Ill. The idea of its founders was to open its doors to every railway surgeon

in the United States and the Canadas, and it soon grew into a very large body. At the meeting held at Galveston, Texas, in May, 1894, the enrolled membership exceeded 1700 names, and there were nearly one thousand persons in attendance at the session. Some there thought that the body was too large and unwieldy, and that that period was perhaps the maximum of its growth. It has not increased since then.

The scope of the work of this society is very broad, covering the entire field of railway surgery, and it aims to interest and associate every railway surgeon. It has held annual meetings in May of each year. It has made large contributions to the literature of railway surgery, and has published a journal which was for all the earlier years, under the editorship of Prof. R. Harvey Reed, then the treasurer of the organization.

Perhaps the most active and influential man in this body is and has been Wm. B. Outten, M. D., Chief Surgeon of the Missouri Pacific Railway system, of St. Louis, Mo. He was president for one term, and on the retirement of R. Harvey Reed, M. D., became the editor of the journal now called the "Railway Surgeon," a position he still holds.

Its *presidents* have been as follows: Surg. J. W. Jackson. Surg. J. B. Murdock, M. D., of Pittsburg, Pa., was elected May, 1889, at St. Louis, Mo. Chief Surg. Wm. B. Outten was elected May, 1890, at Kansas City. Dr. J. H. Murphy, of St. Paul, was elected May, 1891, at Buffalo. Chief Surg. C. W. P. Brock, of Richmond, Va., was elected May, 1892, at Old Point Comfort. Chief Surg. W. J. Galbraith, M. D., of the Union Pacific R. R. Co., was elected May, 1893, at Omaha, Neb. Chief Surg. Samuel S. Thorn, of Ohio, was elected May, 1894, at Galveston, Texas. Chief Surg. J. B. Murphy, was elected May, 1895, at Chicago. Surg. F. J. Lutz, M. D., was elected May, 1896, at St. Louis. Dr. George Ross, of Richmond, Va., was elected May, 1897, at Chicago.

Present Officers—These are as follows: *President*—George Ross, Richmond, Va. *Vice Presidents*—(1st) J. A. Hutchison, Montreal, Can.; (2nd) A. L. Fulton, Kansas City, Mo.; (3rd) De Saussure Ford, Augusta, Ga.; (4th) John J. Buchanan, Pittsburg, Pa.; (5th) H. L. Getz, Marshalltown, Ia.; (6th) R. R. Lawrence, Hartford, Mich.; (7th) W. Q. Marsh, Sierra Mojada, Coahuila, Mexico. *Treasurer*—E. R. Lewis, Kansas City, Mo. *Secretary*—Louis J. Mitchell, 71 Laflin Street, Chicago, Ill. *Executive Committee*—W. B. Outten, St. Louis,

Mo. ; J. B. Murphy, Chicago, Ill. ; Jas. H. Letcher, Henderson, Kentucky.

At its last meeting, in May, 1897, this body changed its name to "THE INTERNATIONAL ASSOCIATION OF RAILWAY SURGEONS," and it selected Toronto, in the Dominion of Canada, as the next place of meeting.

THE AMERICAN ACADEMY OF RAILWAY SURGEONS.

This is an organization composed of railway surgeons of eminence in the United States, and was founded in 1894. It was largely composed of members of the National Association of Railway Surgeons, and it was due to difference of opinion among the prominent members of the older society as to the basis of organization and methods of work that the American Academy of Railway Surgeons was founded.

Prof. R. Harvey Reed, M. D., now chief surgeon of Columbus, Ohio, who had been a very prominent factor in building up the National Association of Railway Surgeons, had been its treasurer and editor of its transactions, was prominent in the organization of the American Academy of Railway Surgeons, was chosen its editor, and gave large attention to its work. He says, in the preface to its first volume of Transactions, as a *raison d'être* for the new organization : "The field of railway surgery has become so large and correspondingly important during the last decade that it has not only elicited the profound interest of every modern surgeon, but the serious consideration of every progressive railway company. With the rapid advancement of the science of modern surgery, and the steady increase of the mileage of the railways of our country, has come the multiplication of railway surgeons, and with them, a proportionate increase of societies and associations of railway surgeons. From the fact that few if any of our medical books teach 'railway surgery,' it has become necessary to multiply these societies and associations, where, as a member of such, the railway surgeon can exchange experience, and learn how best to treat the great army of injured employes and passengers who annually come under his care, in such a manner as to give them the best results with the least loss of time and a minimum amount of suffering, thus reducing to the lowest ebb the amount of damages against the company.

"With a full realization of these important and practical objects, and in the firm belief that '*The higher the order of railway surgery the greater the protection to the employe, the passen-*

ger, and the company,' the American Academy of Railway Surgeons was organized."

The body has a membership of about 120, and is limited by its statutes to 200; it aims to elect only railway surgeons of the first rank upon its roll of members. Its first president—chosen November, 1894, at its first annual meeting—was Chief Surg. C. K. Cole, of Helena, Mont., of the Montana Central Railway. Chief Surg. John E. Owens, of the Chicago and Northwestern Railway Co., of Chicago, was elected in the fall of 1895, and L. E. Lemen, of Denver, Col., is now president, having been elected in the fall of 1896.

This organization, though young in years, has made most valuable contributions to the literature of railway surgery.

Present Officers.—These are as follows:

President.—Dr. L. E. Lemen, Denver, Col.

Vice-Presidents.—(1st) Dr. M. Gardener, San Francisco, Cal.; (2d) Dr. R. Ortega, C. P. Diaz, M. D., Mexico.

Secretary.—Dr. D. C. Bryant, Omaha, Neb.

Treasurer.—Dr. C. B. Kibler, Corry, Pa.

Editor.—Dr. R. Harvey Reed, Columbus, Ohio.

Chairman Executive Board.—Dr. W. R. Blakeslee, Forest City, Pa.

Chairman Committee on Transportation.—Dr. W. J. Galbreath, Omaha, Neb.

Chairman Committee on Arrangements.—Dr. John E. Owens, Chicago, Ill.

STATE ASSOCIATIONS OF RAILWAY SURGERY.

The vast and growing importance of railway surgery can in no way be more strongly evidenced than by the State organizations of railway surgeons. These bodies meet annually, choose officers, read and discuss papers germane to the subject, and have as a result great local interest in the States, being representative bodies, to which the local railway surgeons are more nearly allied. Their chief value and importance is in the education and improvement of the railway surgeons themselves by conference with each other; interchange of thought and experience; and taken as a whole, their contributions to the science have been most valuable.

The papers contributed to the various State and local societies in the United States during the course of each year would fill several volumes, and a simple enumeration of all their titles and authors would take more space than the present edition of

this work would justify. It would be a valuable and timely work to have the more valuable of this literature collected in a series of volumes and published as a Railway Surgery Series by an editorial revising commission, to be named by the State and National organizations, with instructions to edit and publish the same for the use and benefit of both professions; such a series would be of great interest and value.

State societies, known to the Editor, have been organized in the following of the United States: New York, Florida, Iowa, Indiana, Ohio, Texas, West Virginia. Associations of the trunk lines of railway have been organized by the surgeons of the "Big Four" railway system; the Chicago and Northwestern; the Wabash Railway system; the Pennsylvania Railroad; the Plant Railway system; the Santa Fe system; the St. Joseph Railway system; the Southern Railway Association, and the Southwestern Railway Surgeons' Association. These various bodies meet annually, have boards of officers, and have contributed valuable matter to the literature of railway surgery.

DAMAGE CASES AND THE MEASURE OF DAMAGES.

This subject embraces the most fruitful source of litigation in which the principles of railway surgery are involved, and applies to all injuries whether by railways or other corporations, or individuals, who carry on general business with the public.

A railway or other corporation is only responsible for the careless, negligent, wrongful or improper exercise of its lawful rights, powers, or duties acting under the authority of the law.

This liability can only arise upon and for the manner of doing the act, and not for the act itself. (*Slatten v. Des Moines Valley R. Co.*, 29 Iowa, 148; *Mex. Nat. Constr. Co. v. Meddlege*, 75 Texas, 634; *S. W. Rep* 257.)

This liability is unlimited, and if resulting from a wrongful act it is immaterial whether or not its results were unforeseen and not contemplated. (*Brown v. Chic., Mil., & St. P. R. Co.*, 3 Am. & Eng. R. R. Cases, 444; 54 Wis. 342; 11 N. W. Rep. 356-911; 41 Am. Rep. 41, and cases cited.)

Where the injury is the result of an inevitable accident without negligence, carelessness, or improper conduct, no right of action accrues. (*Tucker v. Duncan*, 6 Am. & Eng. R. R. Cases, 263; 4 Woods (U. S.), 652; 9 Federal Rep. 867; *Lewis*

v. Flint & P. M. R. Co., 18 Am. & Eng. R. R. Cases, 263; 54 Mich. 55; 19 N. W. Rep., 744, 52; Am. Reg., 790.)

"Unskilful medical treatment" is no defence by a railway company even when it contributed to the death, if the defendants' negligence was the immediate cause of death. (N. v. M. R. R. Co., 10 Am. & Eng. R. R. Cases, 702; 75 Mo., 653; 42 Am. Rep., 418; Goshen v. England, 119 Ind., 362; 21 N. E. Rep., 977.)

Proximate or Consequential Damages.—Compensation for the actual loss sustained is the fundamental principle upon which the law bases damages. The maxim is "Causa proxima non remota spectatur." "Damages" has been held to be the indemnity recoverable by one who has sustained an injury, either in his person or property or relative rights, through the act or default of another, and the loss must be the natural or proximate consequence of the wrong. (Collins v. E. Term. V. & G. R. Co., 9 Heisk (Term) 841; 20 Am. Ry. Rep., 46; Pullm. Pal. Car Co. v. Barker, 4 Cole 344; Mil. & St. Paul R. R. Co.; 5 Am. & Eng. R. R. Co. v. Kellegge, 94 U. S. 475; Medbury v. N. Y. & E. R. R. Co., 26 Barb. (N. Y.) 564.)

Consequential Damages.—The same rules apply, but the plaintiff must allege or prove that the injury was the result of the defendants' negligence, carelessness, or wrong-doing. (Indianapolis P. & Co. R. Co. v. Pitger, 25 Am. & Eng. R. R. Cases, 313; 109 Ind., 179; 58 Am. Rep., 387.)

Mere fright or shock resulting from a railway collision, producing permanent injury to the nervous system, is too remote to be actionable. (Ewing v. Pittsburg C. C. & St. L. R. Co., 48 Am. & Eng. R. R. Cases, 506; 147 Pa. St., 40; Atl. Rep., 340.)

Compensatory Damages and Exemplary Damages.—The rule is that where there has been negligence only, without malice, wanton or malicious acts, compensatory damages only are allowed; but where the injury is attended with malice, gross insult, or outrageous conduct or inexcusably gross negligence, exemplary or punitive damages are proper.

When a disease caused by an injury supervenes, as well as where the disease exists at the time of the injury and is aggravated by it, the injured person is entitled to full compensatory damages. (Louisville N. A. & C. R. Co. v. Miller, 58 Am. & Eng. Ry. Cases, 304; 37 N. E. Rep., 343; Louisville, N. A.

& C. R. Co. v. Snyder, 37 Am. & Eng. Ry. Cases, 137; 117 Ind., 455.)

Wilful negligence, if wanton, wilful, or malicious, will justify punitive or exemplary damages. (Atchison, T. & S. F. R. Co. v. McGinnis, 46 Kan. 109; 26 Pac. Rep., 253; Kans. City F. & S. R. Co., v. Kler, 41 Kans., 671; Lake Shore & M. S. R. Co. v. Rosenzueig, 26 Am. & Eng. Ry. Cases, 466.)

"Mental anguish." *The Courts* have held in a long line of cases that mental pain or distress is a proper element in estimating damages for personal injuries. (Rapalge v. Machs, Digest Railw. Law, vol. iii. p. 71, and a long line of cases there cited.)



HON. ALONZO P. CARPENTER,
Chief Justice Supreme Court of New Hampshire.

From advance sheets Supreme Court of the States and Territories of North America.

JUDICIAL EVOLUTION AS TO CRIMINAL RESPONSIBILITY OF INEBRIATES.

By the common law of England it was conceded that the words *non compos* meant a total deprivation of reason. Lord Coke divided it into four parts, or, as he called them, "Manners." 1. The idiot or fool. 2. He who, of good and sound memory at birth, lost it by visitation of God. 3. Lunatics who have lucid intervals, and sometimes of good sound memory, and sometimes *non compos mentis*. 4. By his own act as a drunkard. So that drunkenness at and by common law under certain circumstances was a form or species of insanity. By the same common law it was held 1. That the drunkard was responsible for all his acts criminally, even if the state of drunkenness was such as to make him insensible to his surroundings and unconscious of his acts. 2. That drunkenness, instead of being any defence to a charge of crime committed while in a state of intoxication, was not only no defence, but that it aggravated the act. These doctrines were upheld by the English courts in *Dammaree's case*, 15 St. Tr. 592; *Frost case*, 22 St. Tr. 472; *Rex vs. Carroll*, 7 C. & P. 115; and these doctrines have been held likewise in nearly all the American States. In Alabama, *State vs. Bullock*, 13 Ala. 413; in California, *People vs. King*, 27 Cal. 507; in Connecticut, *State vs. Johnson*, 40 Conn. 106; in Delaware, *State vs. M'Gonigal*, 5 Har. 510, in Georgia, *State vs. Jones*, 20 Ga. 534; and in nearly every American State, similar decisions have been made.

The common law which would not uphold a deed, will, or contract, made by a drunken man in an unconscious state of intoxication, would hold the same man criminally liable, for

[From advance sheets Clark Bell's 12th American Edition Taylor's Medical Jurisprudence.]

every act constituting a violation of the criminal law. To-day we are regarding these views as legal curios and relics of the past. The law should have its museums for the preservation of its antique anomalies. A silent, unconscious change has been wrought in the law, not by legislation, but by the growth of ideas, the diffusion of knowledge. Insanity is now demonstrated to be a disease of the brain, of which it is itself an outward manifestation. Inebriety is also shown to be a disease of the man, manifesting itself through brain indications, which demonstrate it to be a form of insanity, sometimes wholly dominating the volition and beyond the power of the victim to control, and is now treated as such. The essential element of crime, *intention*, hardly fits into the acts of the unconscious inebriate, who, while blind or dead drunk, kills an innocent victim, and the absence of motive, like the absence of intention, are missing links in that chain, which the law exacts in regard to all criminal action. It would be next to impossible now to find a judge willing to charge a jury that a crime committed by a man in a state of intoxication, in which the accused was unconscious of his act, or incapable of either reflection or memory, should be placed on a par with one fully comprehended and understood by the perpetrator. Buswell says, in speaking of the old doctrine of drunkenness being an aggravation of the offence: "It is apprehended that this is the expression of an ethical rather than a legal truth." (Buswell on Insanity.)

Such considerations compel us to inquire, What is law? There are two schools of thought regarding it. Webster, the great expounder of the American Constitution, is credited with saying: "Law is any principle successfully maintained in a court of justice." This represents one school.

Richard Hooker, in his Ecclesiastical Polity, represents the other. He says of Law: "There can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage; the very least as feeling her care, the greatest as not exempted from her power." The gulf intervening between these two

extremes, is as wide and deep, as that which divided Dives and Lazarus in the parable of our Lord.

The framers of the New York Penal Code, without the courage to hew down the error of the old doctrine, engrafted thereon a provision that enables a jury now, in that State, to pass on the motive and the intention of the unconscious and wholly insensible inebriate, so that now, in New York, since the Penal Code of that State, a conviction would, in such a case, be well-nigh impossible.

How have the English judges met the question? In 1886 Mr. Justice Day, in *Regina vs. Baines*, at the Lancaster Assizes, charged a Lancaster jury that if a man was in such a state of intoxication that he did not know the nature of his act, or that it was wrongful, he was insane in the eye of the law; and that it was perfectly immaterial whether the mental derangement resulting from such intoxication was permanent or temporary. In 1887 Chief Baron Palles held that if a person from any cause, say long watching, want of sleep, or deprivation of blood, was reduced to such a condition that a smaller quantity of stimulants would make him drunk, than that would produce such a state if he were in health; then neither law nor common sense could hold him responsible for his acts, inasmuch as they were not voluntary, but produced by disease. As long ago as 1865, in the case of *Watson*, tried at Liverpool for the murder of his wife, before Baron Bramwell, the evidence showed that he was laboring under delirium tremens. After the act, he grew calm and said he knew perfectly well what he had done, and that his wife was in league with men who were hidden in the walls. Baron Bramwell, who favored hanging insane men who committed homicides, when acting under an insane delusion, if of sufficient intelligence to understand the nature and quality of the act and its consequences, tried the case, and charged the jury, "that there were two kinds of insanity by reason of which a prisoner was entitled to be acquitted. Probably the jury would not be of opinion that the prisoner did not know the quality of his act, that it would kill and was wrong,

but it was still open to them to acquit him, if they were of opinion that he was suffering from a delusion leading him to suppose that which, if true, would have justified him in the act." One more remark he would make, viz.: "That drunkenness was no excuse, and that a prisoner cannot, by drinking, qualify himself for the perpetration of crime; but if, through drink, his mind had become substantially impaired, a ground of acquittal would then fairly arise." The prisoner was acquitted. Under the English law there is no right of appeal to the convicted homicide, as in the American States, and so it is difficult to find the decision of English higher courts on the questions involved in the discussion. In the American States no person is executed except on the decision of the highest court of the State, if the accused desires it and appeals. In England the appeal does not lie as a matter of right, and so the opinion and dicta of the English trial judges form the real body of the law of England upon these questions. Baron Bramwell undoubtedly regarded Watson as entitled to an acquittal, and the case shows a remarkable result in this respect. Had he been insane and committed the homicide under delusions which dominated his will and controlled his action, he would have been convicted if he had sufficient intelligence to understand the nature and the quality of the act, but the drunkenness which had caused the act which resulted in delirium tremens, with a diseased condition of the brain, also resulted in a delusion which controlled his mental powers so as to render him irresponsible at law. In 1888 Baron Pollock held that the law was the same where insane predisposition and not physical weakness was the proximate cause of the intoxication.

The late English Home Secretary, Mr. Mathews, was one of the ablest men connected with the English government. Under the English system this officer has the power to commute or modify the sentence of the courts in criminal cases, and he exercises it with as much effect, and more in many cases, than would the reversal of the Appellate Court, if the right of Appeal existed. No eye in Great Britain sees more

intelligently the action of the criminal courts than his. It is his province to correct errors and redress grievances and abuses, if such exist or occur, in the criminal jurisprudence of Great Britain. Mr. Mathews named a commission, composed of Mr. J. S. Wharton, Chairman; Sir Guyer Hunter, M. P.; Mr. E. Leigh Penburton, Assistant Under Secretary of the Home Department; Mr. Daniel Nicholson, Superintendent of the Broadmoor Criminal Lunatic Asylum, and Mr. C. S. Murdock, head of the Criminal Department, to inquire into the best mode of treatment and punishment for habitual drunkards. Mr. Mathews says, regarding the appointment of this committee, "Great differences of opinion have arisen, as to what kind and degree of punishment for offences committed by habitual drunkards would be the most effectual, both as a deterrent and with a view to the reformation of such offenders. It appears to me that advantage would result from an inquiry being made into the subject." It may be fairly claimed, so far as the British Islands are concerned, that the old common law rule no longer is enforced there, and that inebriety, as a disease, is now not only recognized as an existing fact, but that the jurisprudence of that country is receiving such modifications as are necessary to fit it for the advance made by scientific research. We are doubtless near similar results in the American States. (Med.-Leg. Jour., Vol. X, No. 3, p. 259.)

RIGHT OR LEFT HANDEDNESS IN THE DETECTION OF CRIME.

In studying a wound, from which death results, where the facts are not proven, and deductions must be made from the wound itself, the state of the body, the environment at death, and the character of the fatal act—every circumstance, every fact and minutest details considered—the silent language of the cadaver, the wound, its minute description and careful study, may lead to the detection of crime, in obscure and doubtful cases.

If the blow was inflicted by a weapon, how was it struck? what was the position of the body at the time the blow was struck? is not infrequently of great importance and interest.

It sometimes becomes of importance to establish whether right- or left-handedness existed, or whether both hands could be used equally well in handling a weapon, pen, or for other purposes. Dr. J. N. Hall of Denver, one of our best authorities, in treating of this subject, says:

“The matter has generally been settled by the production of witnesses, who have testified freely in many cases to a given condition, when an equal number of witnesses has been brought forward who have testified to an opposite condition. In many cases the question could be better settled by an examination of the prisoner, if such an examination could be obtained, or of the corpse, in case this became desirable, by a study of the cicatrices upon the hands, such as are inflicted by every man who handles tools of every kind, but especially the pocket-knife. Although most left-handed boys are taught to write with the right hand, I believe the knife is commonly handled with the left hand in such cases by the left-handed, and many

tools are used in a similar manner in various trades. In women the study could not be expected to be of so much value, and still it has proved to be fairly conclusive in many cases. I should say further, that in the cases of professional and other men, not much given to the handling of tools, cicatrices may not be found, although in America, as long as the Yankee retains his reputation for whittling upon every possible opportunity, they will be present in most cases, and furnish more conclusive testimony than can be given orally. I have found these knife-cuts, as one would expect to find them, upon the radial side and dorsum of the forefinger, upon the ulnar side of the thumb, and to a less extent upon the dorsum, particularly about the knuckle, and in many cases upon the radial side and dorsum of the middle finger. It should be stated that, because of the fact that both hands present scars upon some parts of their surface, a decided preponderance of linear cicatrices upon one side should be necessary to justify a conclusion that implements were constantly used in the other hand, and such a preponderance we have found in most of the cases examined.

“The proposition that we should find, in most cases, scars upon the hand not holding the implement, seems so reasonable that it should require but little proof; but, more in order to learn in what proportion of cases we should be able to form an opinion, I have collected the following one hundred successive cases, with the assistance of Drs. Will F. Hassenplug and S. D. Hopkins, who have done very careful work in the examination of the fifty cases which they have contributed to my list, many of which cases they have shown to me. In the cases in which the cicatrices greatly predominated upon the left hand, generally in a ratio of from four to twelve or fifteen upon this hand to one to four on the right hand, we have simply stated the case to be right-handed, as they have invariably been, while in case the opposite condition existed, the great majority existing upon the right hand, we have called the person left-handed, without error, excepting as is hereinafter stated in connection with ambidexterity.

“The 100 cases were divided as follows : Males, 88; females, 12. (a) Right-handed, that is, with such a preponderance of scars upon the left hand that no doubt could exist, 78. (b) Left-handed, where the opposite condition existed, 7. (c) Cases without scars enough upon either hand to make a decision possible, 8. (d) Cases in which the comparatively even distribution of the scars between the right and left hands made the question doubtful, and in which it was correctly assumed, nevertheless, that the person had originally been left-handed, and had since tried to use the right hand, 6. (e) Case in which many scars were found upon both hands, and yet the patient was right handed (our assumption of left-handedness in this case being erroneous), 1.

“Thus, of the 100 patients, we may at once throw out eight who had no marks to guide us; and one whose scars were equally distributed, who was right-handed, and six similar cases who were left-handed, leaving 85 cases in which a positive decision was arrived at, in every case the decision having been correct. Further, of the seven cases in which the scars were nearly evenly distributed between the two hands, and which were presumed to be left-handed, six were actually so, so that the seventh subject in this group was the only one in whose case error really existed.

It must be noted further that many men claim to be right-handed who still use the knife with the left hand, which would presumably indicate that such subjects would use a weapon in attacking another person with the left hand, and especially so as, in times of excitement, it is well known that artificial habits give way to those natural to one in his earliest years. In a very large percentage of cases, one may with great certainty affirm that natural right- or left-handedness exists, and in most of the cases presenting scars upon both hands in approximately equal numbers, is safe in stating that the person was probably originally left-handed, but learned to use the right hand only after having inflicted many cuts upon it through the use of the left, or possibly continues to use the left at times. It may

prove that, in some occupations, the habitual use of edge-tools in the left hand may call for a modification in these statements."

Dr. J. N. Hall also cites approvingly Dr. Catharine F. Hayden, who says that in women the forefinger of the hand in which the needle is not held shows the marks of the needle, although these would wear away in a short time if sewing were suspended, not being true cicatrices. "Dr. J. N. Thomas has also mentioned that he has seen, in the hands of wood-carvers and engravers, in which the tool was not held, the scars of pricks made by the implement in question. Obviously the occupation of the person would have an important bearing in this connection."

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THE TRUE TEST OF THE CRIMINAL RESPONSIBILITY OF THE INSANE.

There is no legal warrant either in England or America for the language, imputed to Mr. Justice Brett, in the case of *Reg. vs. Blampied*, Maidstone Sum. Ass., 1895. The decision of the jury was correct and eminently proper. The dicta of Mr. Justice Miller (*ante*) in *Reg. vs. Cockcroft* more correctly states the law applicable to such cases.

1. There is a difference between an insane delusion which dominates and controls the action of an insane person, and a mere delusion which affects the sane or the insane mind similarly. Both sane and insane minds may rest under delusions, but whether the insane delusion, be of such a character as to dominate the will and action of the accused, *in reference to the act*, is the crucial test of criminal responsibility.

2. No amount of moral degeneration, or vice, which has become unresisted or irresistible ever excuses crime. The second-nature criminal may have irresistible impulses to steal, rob, and commit crime. The light of science shines upon the path and clearly marks the boundary line of crime and vice in him who, dominated by an insane delusion, which controls the conduct and dominates the will, commits an act which lacks all the essential elements of crime. Chief Justice Gibson states the law correctly when he says in *Commonwealth vs. Mosler*, 4 Barr 266: "It (insanity) must amount to a delusion or hallucination controlling his will, and making the commission of the act a duty of overruling necessity," and again: "The law is that whether insanity be general or partial, it must be so great as to have controlled the will of its subject, and to have taken from him the freedom of moral action."

The knowledge of right and wrong, either in the abstract or in regard to the act committed, knowledge of its character and consequences, even, may exist, as in the case of Guiteau and possibly, though not probably, in the case of Dr. Beach (at the moment of the killing), then even, in the language of Judge Gibson, "If it (the insanity) was so great as to have controlled the will and taken from him the freedom of moral action," by the law of Pennsylvania the accused would not be responsible, and in cases of moral insanity under the law of that State, as announced by the court, Mr. Chief Justice Lewis pronouncing the opinion, "We say to you as the result of our reflections on this branch of the subject, that if the prisoner was actuated by an irresistible inclination to kill, and was utterly unable to control his will or subjugate his intellect, and was not actuated by anger, jealousy, revenge, and kindred evil passions, he is entitled to an acquittal."

Sir James Fitz James Stephen, by far the ablest writer upon the criminal law of England, in reviewing it historically, writing as late as his treatise on the History of the Criminal Law of England (1883), says: "I know of no single instance in which the Court for Crown Cases Reserved, or any other Court, sitting *in banco*, has delivered a considered written judgment, on the relation of insanity to criminal responsibility, though there are several of such decisions as to the effect of insanity on the validity of contracts and wills." (Stephen's Hist. Crim. Law of Eng., Vol. II., p. 152).

The question is, or should be, How far does the delusion dominate the volition, or in another class of cases, as Sir James Stephen puts it, "Was the accused deprived, by a disease affecting the mind, of the power of passing a rational judgment on the moral character of the act which she meant to do?" (Bell's Medico-Legal Studies, vol. ii. p. 1.) Lord Denman said, in *Rex vs. Oxford*, 2 C. & P. 225, where the accused was evidently acting under the duress of a delusion probably of an insane character: "If some controlling disease was in truth the acting power within him which he could not resist, then he

will not be responsible." In *State vs. Pike*, 49 N. H. 399 (50 N. H. 367).

The opinion of Chief Justice Doe is the most masterly and instructive discussion of the law of Criminal Responsibility of the Insane extant. (Bell's Med.-Legal Studies, vol. ii. p. 14; *vide* also *Laws on Insanity*, p. 311, 312), and 2 Lawson's *Crim. Def.* 311 *et seq.*; also *Decisions in American States*. (*Kriel vs. Com.*, 5 Bush (Ky.) 362); *Smith vs. Com.*, 1 Duv. (Ky.) 224); in *Virginia* (*Dejarnette vs. Com.*, 75 Va. 876; in *Mississippi* (*Cunningham vs. State*, 56 Miss. 269); in *Connecticut* (*State vs. Johnson*, 40 Conn. 136), (*Anderson vs. State*, 43 Conn. 514); in *Iowa* (*State vs. McWhorter*, 46 Iowa 88), *State vs. Feltes*, 35 Iowa 68); in *Illinois* (*Hopp vs. People*, 31 Ill. 385); in *Indiana* (*Bradley vs. State*, 31 Ind. 492), in *Texas* (*Harris vs. State*, 18 Tex. Court of Appeals 87); in *Pennsylvania* (*Coyle vs. Com.*, 100 Pa. 573); in *Georgia* (*Roberts vs. State*, 3 Ga. 310); in *Massachusetts* (*Com. vs. Rogers*, 7 Metc. 500).

The most complete recent statement of the law will be found in the opinion of Somerville, J., in *Parsons vs. State*, given in full in Bell's Med.-Legal Studies, vol. ii. p. 16; *Medico-Legal Journal*. This holds that the inquiries to be submitted to the jury in any criminal trial where the defence is of insanity is interposed should be:

1. Was the defendant at the time of the commission of the alleged crime, as matter of fact, afflicted with a *disease of the brain affecting the mind*, so as to be either idiotic, or otherwise insane?

2. If such be the case, did he know right from wrong as applied to the particular act in question? If he did not have such knowledge, he is not legally responsible.

3. If he did have such knowledge, he may nevertheless not be legally responsible if the two following conditions occur:

- (1.) If, by reason of the duress of such mental disease, he had so far lost the *power to choose* between the right and the wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed.

(2.) And if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it *solely*.

(Bell's Med.-Legal Studies, vol. ii. p. 31. *Vide* also opinion by Dillon, C. J., in *State vs. Felton*, 35 Iowa 67 (Bell's Med.-Legal Studies, vol. ii. p. 16.) Judge Dillon held: That the capacity to distinguish between right and wrong was not a safe test of criminal responsibility in all cases, and it was accordingly decided, that, if a person commit a homicide, knowing it to be wrong, but do so under the influence of an uncontrollable and irresistible impulse, arising not from natural passion, but from an insane condition of the mind, he is not criminally responsible. "If," said Chief Justice Dillon, "by the observation and concurrent testimony of medical men who make the study of insanity a specialty, it shall be definitely established to be true that there is an unsound condition of the mind, that is, a diseased condition of the mind, in which, though a person abstractly knows that a given act is wrong, he is yet, by an *insane impulse*, that is, an impulse proceeding from a diseased intellect, irresistibly driven to commit it—the law must modify its ancient doctrines and recognize the truth, and give to this condition, when it is satisfactorily shown to exist, its exculpatory effect."

In the case of *People vs. Daly*—trial in 8th District Court at Washington, D. C., Jan. 13, 1887—Judge Montgomery charged the jury as follows:

1. Was the defendant, at the time of the act, as matter of fact, afflicted with disease of the mind, was he wholly or partially insane?

2. If he *was* so afflicted, did he know right from wrong, as applied to the homicide in question?

If he *did* have such knowledge, had he by reason of the duress of such mental disease, so far lost the power to choose between the right and the wrong, and to avoid doing the act in question, as that his free agency was, at the time, destroyed, and if so, was the homicide so connected with such mental dis-

ease, in the relation of cause and effect, as to have been the product of it (the mental disease) solely. If you are satisfied from the evidence that the defendant was mentally afflicted, so that he did not know right from wrong, as applied to the act, or if he *did* know, but by reason of the duress, the stress of his mental disease (if he had any), he had no power to choose, no power to avoid doing what he did, and if the homicide was the product of his mental condition solely, or, if by reason of the insane delusions which the defendant had been harboring (if any), he had reached that condition of mind where the morbid impulse to kill became irresistible, and existed in such violence as to subjugate his intellect, control his will, and render it impossible for him to do otherwise than to yield and do as he *did*, then he is not to be held accountable.

“If some controlling (mental) disease was in truth the acting power within him, which he could not resist, then he will not be responsible.”

“If a person commit a homicide under the influence of an unaccountable and irresistible impulse, arising *not* from natural passion, but from an insane condition of the mind, he is not criminally responsible.”

MEDICAL EXPERT TESTIMONY.

BY CLARK BELL, ESQ., LL. D., PRESIDENT INTERNATIONAL MEDICO-LEGAL CONGRESS.

There is at the present moment a deep feeling of uneasiness, unrest and great anxiety in the legal profession in America, among the judges and the bar, regarding medical expert testimony, as it is applied in courts, taking the practice in the great State of New York as a sample—or exemplar.

It may be fairly asserted that juries almost entirely disregard it. The ordinary principles of the weight of testimony do not apply to it, in the minds of either courts or juries, especially, where the views of medical experts, diametrically oppose each other on what seems to the jury to be the same state of facts.

The whole subject has fallen into disrepute with the bench, the bar and the general public. This is a great calamity, a public misfortune, but it is an indisputable fact.

At the December dinner of the Medico-Legal Society, Hon. John W. Goff, devoted the major part of his address to this subject. I quote from his remarks a few of the serious statements:—

The most important medico-legal question today is that relating to expert testimony in criminal cases. It not only affects the medical and the legal professions in their highest aims and purposes, but it also affects the very administration of criminal justice.

At one time both judge and jury gave the most serious consideration to the testimony of experts, who, by their studies and researches and the devotion of their lives to the pursuits of science, were regarded in courts of justice with profound esteem and respect. But, above and beyond professional attainments their honor and integrity were unquestioned and unsullied.

An impartial examination and candid expression will show a very different standard of, and regard for expert testimony today. Its value is certainly very much depreciated, and its reliability is openly scoffed at. The intelligence of the common people cannot be hoodwinked by expert testimony in the miscarriage of justice. These miscarriages have occurred so frequently and many of them have been so flagrant, that, now, if a great crime is committed, the popular mind, before even investigation or trial concludes that the criminal will escape by the discovery of some slight or infinitesimal strain of insanity in the collateral branches of his seventh generation of ancestors.

Of course it is a pre-requisite that the criminal should either be wealthy and able to pay for professional services and expert testimony, or that his crime should be of such a sensational character that the notoriety of a professional relation with his trial would to some extent be an equivalent compensation. The increasingly large fees paid to experts by the State and by the defendant, and the advertisement given by the universal newspaper, are such rich prizes that the crude thinker, the pseudo-scientist, the charlatan, and advertisement seeker forge ahead in such numbers that the

real student, the unostentatious and unassuming man of real science is lost to sight and fame. The encyclopedia has taken the place of experience, and garnished cramming for the trial has supplanted substantial knowledge.

Science is the knowledge and the demonstration of truth. It is true that the science of the mind is not an exact science, but since truth is the object of all scientific investigation, there are at least certain elementary principles which govern, and which honest and enlightened men must agree upon. What a spectacle it is to see two sets of medical witnesses at absolute variance with each other upon the same state of facts. Upon the same hypothetical question I have seen six medical witnesses disagree, three asserting positively that the defendant was insane and three with equal positiveness asserting that he was sane. A hypothetical question taking over an hour to read, largely composed of the conjectural history of ancestry and of absurdities and trivial incidents in the life of the subject, is presented to a man for an opinion, who has never seen the defendant before entering court, and the expert witness listens attentively, looks wisely and oracularly delivers his opinion upon the sanity or the insanity of the individual. But more remarkable yet is the fact, that in the majority of cases, that very hypothetical question has been prepared by the expert witness for himself to answer. To expect that faith or credence will be given to that opinion is drawing largely upon human credulity.

The expert in many cases justifies himself in doing just what a lawyer does for his client. The expert is frequently the consulting counsel of the lawyer. He enters into the spirit of the prosecution or defence with almost the same enthusiasm that the lawyer does, and he regards a verdict of conviction or acquittal, according to whichever side he is retained on, as a vindication of his position and a triumph for his science. He ignores the fact that there is a radical difference between the advocate and the doctor. The advocate comes into court openly, and avowedly, the mouthpiece of his client; his personality is completely lost sight of. He has no opinions, or if he has, he is not permitted to express them. For the time being, he completely puts aside his individuality and he acts and talks for his client solely and exclusively. There can be no mistaking his position. But the doctor goes upon the witness stand as a man of science, as an expounder of truth, supposed to be absolutely impartial in his investigations and indifferent as to the results when they are ascertained.

The lawyer argues, contends and pleads for his client. The force of the logician, the skill of the dialectician, and the graces of the orator, are all brought into play in the cause of his client; and in all this the lawyer is not hampered by being a witness, nor is he placed under the sanction of an oath. The doctor, however, goes upon the stand as a witness sworn to tell the truth, and acting under that sanction of an oath which exacts the whole truth and nothing but the truth, he goes there to expound the truth regardless of any side to the case; and yet our experience in the courts shows us that he very frequently becomes as much of a partisan in the witness chair for his client as the lawyer at the bar is. Is it any wonder that an incredulous smile plays upon the faces of jurors as the average medical expert takes the witness stand. I must be clearly understood as not including in this category some gentlemen in the medical profession who are as thorough in their science as they are honorable and incorruptible in their integrity. If all medical witnesses were of such calibre, so much cause would not exist for criticism.

It is degrading to see men go on the witness stand as experts, who, outside of the technicalities (I might almost say the mechan-

ism) of their profession, are uncultured and woefully lacking in the requirements of ordinary scholarship and learning.

In my opinion the day is not distant when the State and the medical profession will have to seriously consider the proposition of requiring the expert to be a quasi-judicial officer, an officer whose professional attainments and personal integrity will be recognized by his professional brethren, and whose status in the administration of criminal justice will enable him to prosecute his investigations and deliver his opinions uninfluenced by private personal motives or advantages, or in the success or defeat of prosecution on defendant.

The medical profession is more closely allied to the happiness, comfort and well-being of humanity than any other profession in the world. It has produced more benefactors to the human race than has any other profession, and there is no doubt but that when this question comes to be clearly considered and weighed, in view of the existing conditions, the profession will place itself in the line of progress and for the better attainment of those two great objects which medicine and law exist for, truth and justice.*

It is most unfortunate that the severest blows that have been dealt to expert medical testimony, have been struck by physicians themselves, and as in that most reprehensible case cited by Mr. Recorder Goff, by some holding or lately holding high position:

All the professions, are unfortunately afflicted with unworthy members, none more so than the legal, but in the medical, as in the clerical profession, the power of one man or a few bad men to do irreparable injury, is tenfold greater than in other professions or walks of life. Take the case cited by Recorder Goff, of the medical expert, who having taken a fee for the defendant in a case exciting the greatest public interest, accepts a greater one from the other side, and unblushingly goes over. The more prominent the physician in professional or social circles who does this disgraceful act, the deeper is the injury he inflicts upon his own profession. The facts of this case were not made public or generally known; but enough do know it, so that both professions understand who the party is. It may be well said of that physician, no matter how high his previous standing, or what his social or official position may have been, "That he is the assassin of medical expert testimony."

The question raised for discussion for the recent session of the Medico-Legal Society was,

PLANS OF REFORM.

After the notices had been sent for that meeting, I received from one of the most scholarly men of the bench of the supreme court of Maine, an active member of this society, and who has taken a deep interest in its prosperity and labors, Judge L. A. Emery, of Ellsworth, Maine, the following letter:

ELLSWORTH, MAINE, February 6, 1897.

CLARK BELL, Esq.,

My Dear Sir:—I much regret I am unable to attend the dinner

* The newspaper accounts were so varied and conflicting that I asked Recorder John W. Goff to correct the remarks as he was willing that they should go out, and the remarks herewith submitted are from his notes as corrected by him.

of the Medico-Legal Society on the 17th inst. "I have long considered the importance of some reform in the medical testimony in our courts."

My own plan of reform would be, that whenever either party apprehends that expert medical evidence will be desirable, he shall apply to the court to appoint one or more medical examiners, to make such examinations and investigations as either party might desire, and make report. The parties would, nine times in ten, agree upon examiners, who would almost be in the front rank of the profession. When they did not agree, the court would have no difficulty in selecting one.

These examiners would be free from the temptation of favoring either side, and could be put on the witness stand, feeling that they had only the truth to serve. As appointees of the court, they would feel much more independence than when summoned and paid by a party.

To insure an application for such examiners, it might be provided that the court should not proceed with the trial, when expert medical testimony was offered, until an official examiner had been appointed and reported. Still one side or the other would almost invariably ask for an examiner.

We have, in this state, such a provision as to surveyors of land, lumber, etc., and it works admirably. Nine times in ten the court surveyor is the only one examined as a witness, so hopeless is the talk of overturning his testimony.

Yours truly,
L. A. EMERY.

I sent a copy of Judge Emery's letter to a few of the judges upon the roll of active and corresponding members of the Medico-Legal Society, asking their views upon the general subject of discussion, and particularly upon the plan suggested by Judge Emery, and asked that replies be sent for this discussion. I think I can do no higher service than to give a few of these replies:

The Hon. D. J. Brewer, one of our members, Justice of the Supreme Court of the United States, says:

SUPREME COURT OF THE UNITED STATES,
WASHINGTON, February 10, 1897.

HON. CLARK BELL, ESQ., Secretary, etc., 39 Broadway, New York,

Dear Sir:—Yours of the 8th inst. is received. I regret to say that I shall not be able to attend the meeting of the Medico-Legal Society on February 17th next, neither have I time to enter into any discussion of the very important subject of medical testimony in the courts. I agree that some reform is necessary; that unless something is done the whole matter of expert testimony will become a disgrace to the profession. I do not venture to suggest any remedy, but I do urge upon the Society a full consideration of the question, that some suitable plan may be devised to obviate the present unfortunate condition.

Yours truly,
D. J. BREWER.

The Hon. Walter Clark, of the Supreme bench of North Carolina, who has long deserved a judicial fame much wider than his own state, replies:

NORTH CAROLINA SUPREME COURT,
WALTER CLARK, ASSOCIATE JUSTICE,
RALEIGH, N. C., February 13, 1897.

HON. CLARK BELL, Esq., LL. D.,

My Dear Sir:—Accept my thanks for invitation to the February meeting and regrets at my inability to attend

I cordially concur with Judge Emery in his views as to medical testimony, and would gladly see the reform he suggests adopted.

With high consideration,

Your obedient servant,

WALTER CLARK.

Clarence A. Lightner, Esq., of the Detroit bar, a lecturer on Medical Jurisprudence, and one of our most devoted workers, Secretary of the Medico-Legal Congress of 1895, replies as follows:

KEENA & LIGHTNER,
ATTORNEYS & COUNSELLORS,
87 MOFFAT BLOCK,
DETROIT, MICH., February 15th, 1897.

MR. CLARK BELL, No. 39 BROADWAY, N. Y.,

My Dear Mr. Bell:—In regard to the suggestions of Judge Emery, enclosed in your last letter, I submit the following with much deference to his more experienced judgment.

While submitting the necessity of improvement in the character of expert testimony to ensure justice, I doubt very much the feasibility of such a plan as proposed by Judge Emery, under the system by which law is administered in our several states. I doubt whether a law can be framed, which would at the same time prove to be effective and would also be constitutional.

To compel an unwilling party to submit the determination of the facts in his cause to the judgment of any person, other than the common law jury is, I think, at least a questionable power in a legislature under the constitution of most, if not all, of our states. Nor would I be strongly of the opinion that allowing either party, if he so desired, to call further expert testimony, would render the legislation unobjectionable.

If both parties in any cause agree upon such action, there can be no objection and much good will result; but for this no legislation is needed. I feel that more good would result from the adoption of a court rule, which would tend to encourage the adoption of such action under guidance of the court, in cases where parties are willing to avail themselves of the offer thus made to them, to agree upon an expert, than from any possible legislation seeking to compel parties to adopt this course.

Also, this can affect only a portion of expert testimony. It cannot, for instance, take the place of the testimony of the physician,

A more general knowledge among the medical profession as to their duties and right as witnesses, will do much to render expert testimony more reliable. It is their privilege (I apprehend that so simple a fact is not thoroughly understood among physicians) to them, who though biased in the matter, have chanced to conduct the post-mortem, or to attend the injured person "ante litem mortem,"

confer with one another before testifying. If it became the practice for experts to consult with one another, there would be little need for an arbiter, as an expert. Although physicians may not have the right to refuse to testify in a given case, they can refuse to testify in the way desired by either party.

They should so refuse, unless in doubtful cases, they are allowed to have a conference with the other experts.

In closing, I must suggest what is generally lost sight of in treat-

ing of this subject, Medical, is not the only expert testimony relied upon in our courts, and however open to criticism medical expert testimony may be decided to be, I maintain that it is no worse, but rather much better than most other scientific testimony, other things being equal. My experience has led me to trust the medical man rather than say, the mechanical expert.

I shall hope to be with you at one of the meetings of the Medico-Legal Society before long, when I can imbibe more and talk less.

I shall be pleased to be remembered to any friends who may be with you Wednesday evening.

Very sincerely yours,
CLARENCE A. LIGHTNER.

Dr. J. O. Tracey, Assistant Physician at Long Island State Hospital, one of our best workers among the junior medical men who have devoted their lives to mental medicine, replies:

STATE OF NEW YORK—LONG ISLAND STATE HOSPITAL,
W. E. SYLVESTER, M. D., GENERAL SUPERINTENDENT,
BROOKLYN, February 16th, 1897.

CLARK BELL, ESQ., 39 BROADWAY NEW YORK CITY,

Dear Sir:—As I cannot attend the meeting of the Medico-Legal Society on the 17th inst., I take this means of expressing, very briefly, my views, on one point, concerning expert testimony; and, when I say expert testimony, I refer more particularly to that concerning the mental condition of a person accused of crime; although the suggestions which I wish to make might apply equally well to other branches of science.

An expert is one who has special skill, experience or knowledge, as in some department or branch of science.

The court and the jury, as a rule, have no adequate means of knowing the degree of knowledge possessed by an expert witness when he takes the stand to testify, and are therefore unable to give to his testimony the weight which it deserves. Therefore, I believe that there should be a law requiring every man who poses as an expert, to pass an examination prescribed by the Regents of the University of the State of New York, in that particular branch of medicine or science in which he claims to possess special skill or knowledge, after he has satisfied them that he has given to that particular branch of science such time and study as would tend to give him particular skill or knowledge.

The court and jury could then feel reasonably certain that the witness possessed, at least a theoretical knowledge of the subject on which he proposed to give an expert opinion.

Very truly yours,
J. O. TRACEY.

Prof. Henry Clay White, Probate Judge of Cuyahoga county, a student and Professor of Medical Jurisprudence, writes as follows:

PROBATE JUDGE'S OFFICE, CUYAHOGA COUNTY.

HENRY C. WHITE, PROBATE JUDGE.

CLEVELAND, O., February 15th, 1897.

DR. CLARK BELL, NEW YORK, N. Y.,

Dear Sir:—In the North American Review for February, Dr. Henry Smith Williams, has made a striking contribution to the current discussion of the "medical expert" problem.

With his pungent and strong statements, those who are in positions to observe the distressing odium cast on the "professional" witness, will not seriously take issue. There are a couple of suggestions however, which would occur to the average lawyer, touching his recommendations, which, while they do not go to the merits of his reform, may be worth considering.

Dr. Williams deals with the office of the expert in criminal procedure, mainly. His mode of selecting and securing expert evidence, is substantially the plan pursued in Continental Europe. To one in the least cognizant of the radically different methods of criminal procedure on the continent, and where English law prevails, will mark the insuperable objection to procuring evidence for or against a person charged with, or on trial for, a felony, from the official report of a commission of "assessors," or expert referees.

Continental inquisitorial procedure in the administration of criminal law, is diametrically opposed to the genius of the law in English speaking communities.

The right of trial by jury is secured to every accused person, with no stronger sanction, than his right to be confronted with the witnesses of the State; his right to counsel; and his right to cross examine every witness brought by the State, in the presence of the court and jury by all English codes and constitutions. In this State, (Ohio) the question has been much mooted, for instance, whether the record of testimony taken in the case of homicide, at the coroner's inquest, can be used. Courts of high authority have held, that such evidence is inadmissible, because it tends to militate against the right of the accused to face his witnesses.

In civil causes, touching testamentary capacity, the conservation of lunatics, and inquests of lunacy for hospital commitment, the plan of the "impersonal" expert investigation and report, might be practicable, and advisable. The "partisan" expert witness, and the facility for securing his service, furnishes a serious menace to the certainty of justice, and is derogatory to the dignity and usefulness of the medical profession.

In proceedings for the admission of patients to the State hospitals for insane, in Ohio the services of the non-partizan medical expert are easily procured. These inquests are conducted by the probate judge. It is made by law, his duty in every case, to summon one or more "respectable physicians," among the witnesses called. The witnesses are examined by the court, and not by counsel, if counsel should appear, which is very rare. Thus the objectionable features of the law, resulting often in procuring biased expert evidence, are eliminated.

Dr. Williams advocates the selection of experts through a civil service board; and argues strongly in favor of the special education of professional experts. This is the suggestion of another field for the specialist. The cultivation and setting apart of a special class of chemists and toxicologists, may conduce to the advancement in skill and science, of a highly valuable class of learned men. But, if the division of labor theory is carried out much further, what will become of the "general" practitioner? What will be left for him? The curriculum of the medical college is coming to be treated as merely the scheme of a preparatory school, where a smattering of general medical knowledge is afforded. This universal tendency to specialization, is sadly undermining the old-fashion sense of dignity and value of a sound general education.

There is another fact concerning the real value of a thoroughly educated general practitioner, as a witness, which should not be ignored. Acquaintance with the person whose mental condition is the subject of inquiry, gives the expert witness a controlling advantage.

In my office of probate judge here, in an experience of nearly ten years, holding on an average, five inquests in lunacy a week, I am able to render cheerful testimony to the value of the "family" doctor, as an expert witness. He enjoys the peculiar advantage of knowing the "history" of the patient; and can make those comparisons of the patient with himself, covering wide periods of time,

which opportunity and experience outweighs the mere theoretical knowledge of the expert as sources of reliable evidence.

Do not relegate the thorough family physician to the rear, to give place to the theoretical expert witness.

Very respectfully,

HENRY CLAY WHITE,

Professor of Medical Jurisprudence, Cleveland Medical College.
Cleveland, O., February 15, 1897.

As the result of the discussion and on conference with Judge L. A. Emery, of Maine, Regent Foster, Esq., of New York city, returns the following rough draft of a proposed law, which is herewith submitted for criticism.

"An Act in Relation to Expert Testimony," passed the — day of —, 1897.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. When in any civil or criminal proceeding it appears that the testimony of skilled experts may aid in determining any issues of fact, any justice of the Court in which such proceeding is pending may upon the application of either party and after reasonable notice and hearing appoint one or more skilled experts and make such reasonable examinations and tests in relation and the personal thing or subject matter involved as either party may request.

Section 2. Such expert may be examined as a witness at the trial by either party or by the Court, and shall receive for his services and for his attendance at court a reasonable sum to be fixed by the Court and paid by the party making the application and be taxed in his costs if he recover.

SUPPLEMENT.

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PSYCHOLOGICAL SECTION OF THE MEDICO-LEGAL SOCIETY.—ANNUAL REPORT.

TO THE FELLOWS OF THE PSYCHOLOGICAL SECTION AND OF THE MEDICO-LEGAL SOCIETY.

The work of the Section for the year, since the last Annual Report may be summarized as follows :

1. The Psychological Bulletin as a quarterly publication, is no longer issued, and the matter of that journal has appeared in the Medico-Legal Journal, under the Department Psychological.

2. The following papers, addresses and articles have been contributed to the Section :

"Hypnotism and Crime," by Prof. W. Xavier Sudduth, of Chicago, Ill.

"Sexual Inversion, with an Analysis of Thirty-three New Cases," by Dr. Havelock Ellis, of England.

"Idiocy and Crime," by G. R. Shuttleworth, B. A., M. D., of Lancaster, England.

"The Hypnotic Power—What is it?" by Judge Abram H. Dailey.

"Child Insurance," by Fred. L. Hoffman, Esq., F. S. S.

"Fraudulent Life Insurance," by H. R. Storer, M. D., LL. D., of Newport.

"Hypnotism in Courts of Law," by Clark Bell, Esq., LL. D.

"Medical Supervision for Criminal Arrests," by Austin Abbott, LL. D.

"Legal Responsibility of Inebriates," by T. D. Crothers, M. D., of Hartford.

"Mechanical Restraint of the Insane," by Clark Bell, Esq., LL. D.

"Suggestion as an Idio-Dynamic Force," by Prof. W. Xavier Sudduth, of Chicago, Ill.

"Psychometric Science and Intuitive Perception," by Sophia McClelland.

"Clinical Experiments in Hypnotic Suggestion," by G. Sterling Wines of Brooklyn.

"Action on Legislation Regarding the Insane in New York."

Paper on the "Coroner System," by A. T. Weston, Coroner's Physician.

Report of Committee on Coroner's System and Discussion, by Theo. H. Tyndale, of Boston; Wyatt Johnson, M. D., of Montreal, Phillip H. J. Donlin, M. D., A. T. Weston, M. D., Coroner's Physician, of N. Y., F. B. Downs, M. D., Coroner of Bridgeport, Conn., Clark Bell, Esq., and others.

"Sexual Perversion," by Wm. Lee Howard, M. D.

"Report of Woman's Committee," on the case of Florence Maybrick, by Caroline J. Taylor, Chairman.

"Narcotic Inebriates," by J. B. Mattison, M. D.

"Thoughts on Telepathy," by Prof. W. Xavier Sudduth.

"Clairvoyance," by Sidney Flower, Esq.

"The Law of Suggestion as a Factor in Human Life," by Thomson Jay Hudson, Esq., of Washington, D. C.

"Telepathy," by Clark Bell, Esq., LL. D.

"A New Study of Diseased Memory," by T. D. Crothers, M. D.

"The Pathology of Thought," by Sophia McClelland.

"Hypnotism in the Far East," by Margherita Arlina Hamm, M. A., of New York City.

"Has the Physician Ever the Right to Take Life?" by Clark Bell, Esq., LL. D.

"On Intemperance,—Consanguine Marriages and Educational Overpressure as Factors in the Genesis of Nerve Disease and Degeneration of the Race," by Sir Frederic Bateman, M. D., LL. D., F. R. C. P., Norwich, England.

"Mental Impressions," by M. Louise Thomas, of New York.

"Heredity," by Clark Bell, Esq., LL. D.

"From Suggestion to Evolution," by Ida Trafford Bell.

3. The following subjects are within the Domain of Studies pursued by the Section:

1. The Medical Jurisprudence of Insanity.
2. Inebriety, Heredity and Sociology.
3. Criminality and Criminal Anthropology.
4. Mental Suggestion, and especially of Physicians as to Clinical Suggestion and Therapeutic Hypnosis.
5. Experimental Psychology.
6. Telepathy.
7. Clairvoyance.
8. Facts within the Domain of Psychical Research, including investigation into so-called Modern Spiritualism.

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The annual Dues of the Section are \$1.50, entitling the members to the Medico-Legal Journal free.

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SECTION ON MEDICO-LEGAL SURGERY—MEDICO-LEGAL SOCIETY.

ANNUAL REPORT—JANUARY 1, 1897.

TO THE FELLOWS OF THE SECTION OF MEDICO-LEGAL SURGERY AND OF THE MEDICO-LEGAL SOCIETY :

The domain and province of the Section is defined by the following standing resolution :

Resolved, That all questions in medico-legal surgery are to be deemed within the scope and province of the Section on Railway Surgery, including, especially, military and naval surgery and the broad domain of surgery in its relation to medical jurisprudence."

The Section is intended to embrace besides naval, military and railway surgeons and counsel, railway managers, railway officials, whether lawyers or surgeons ; many of whom have already united with the body, and who are eligible to membership under the statutes of the society.

The officers of the Section are as follows :

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Chief Surg. A. C. Scott, M. D., of Texas.	

Three members of the Executive Committee constitute a quorum, and five of the Board of Officers, of the Section.

The work of the Section during the preceding year has been devoted to the advancement of the science of the medical jurisprudence of surgery in all of its branches. The papers contributed upon these branches of science have been in part published in the Medico-Legal Journal, which is the official organ

of the Section, except those contributed to the Medico-Legal Congress of September, 1895, which will appear in the Bulletin of that Congress.

At the December, 1896, meeting of the Section held in joint session with the Medico-Legal Society in the City of New York contributions were read by members of the Section, which will be published in the Medico-Legal Journal, and by authority of the joint session will be embraced in the Bulletin of the Medico-Legal Congress, if desired by the authors.

The following is a *resume* of the work of the Section during the year :

1. Paper by J. Mount Blyer, M. D., read before the Section in joint session in the Medico-Legal Society, April, 1896:

"The X Ray in Medico-Legal Surgery." This paper was illustrated by a complete apparatus for a display of the Cathode Ray and the new Röntgen Ray.

2. Report of the Standing Committee favoring the "Railway Hospital System," made and adopted at April meeting of 1896. Published p. 435, Vol. XIII, Medico-Legal Journal, March, 1896.

3. Report of Standing Committee on "Car Sanitation and Railway Transportation of Contagious and Infectious Diseases." Made and adopted at April meeting, 1896, and published in Vol. XIII, Medico Legal Journal, p. 437, March, 1896.

4. Paper by Clark Bell, Esq., on "The Future of Railway Surgery." Read at May meeting, 1896.

5. Action on behalf of the Section and of the Medico-Legal Society, submitting both the foregoing reports to the National Association of Railway Surgeons, at St. Louis, April 30 and May 1 and 2, 1896.

6. "Duties and Responsibilities of the Attending Physicians in Cases of Railway Surgery," by Judge Abram H. Dailey.

7. Same subject, by Clark Bell, Esq. See p. 7, Vol. XIV, Medico-Legal Journal.

8. Discussion of same subjects, by H. W. Mitchell, M. D., Surgeon J. K. Stockwell, Chief Surgeon Frank J. Valentine, Judge Abram H. Dailey, Chief Surgeon C. M. Daniels, Surgeon H. MacDonald, Surgeon Frank J. Dow and Mr. Clark Bell. Reported p. 335, Medico-Legal Journal, Vol. XIV, December, 1896.

9. Discussion of the same subject, by H. W. Mitchell, M. D., Judge Abram H. Dailey, Albert Bach, Esq., Frederick E. Crane, Esq., D. Benjamin, Esq., S. B. W. McLeod, M. D., and Clark Bell, Esq. Reported in Medico-Legal Journal, No. 1, Vol. XIV, June, 1896, p. 123.

10. Address by Clark Bell, Esq., at December Session of the Section, 1896, on "The Scope and Progress of the Work of the Section."

11. Paper by Harry Reed, M. D., Vice-Chairman of the Section, on "Progress and Work of the American Academy of Railway Surgeons."

12. "Review of the Relief and Hospital Department," by Geo. Chaffee, M. D.

13. "Transfusion in Severe Cases of Shock in Railway Injuries," by H. W. Mitchell, M. D.

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TOXICOLOGICAL.

ANNUAL REPORT OF THE TOXICOLOGIST OF THE MEDICO-LEGAL SOCIETY.

CHEMICAL LABORATORY, W. S. McVEY, F. C. S.,
CHEMIST AND TOXICOLOGIST,
COLLEGE OF PHYSICIANS AND SURGEONS,

BOSTON, December 31st, 1896.

To the Fellows of the Medico-Legal Society:

The year that has passed has been an eventful one in the scientific world, and earnest workers have brought forth many new methods of great importance to modern civilization. In the field of toxicology much has been added to our present source of knowledge relative to the detection of administered poisons with criminal intent to destroy human life.

There is a danger to which I wish to call attention; that is the use of culteres of poisonous germs as a means of destroying life, I hope that during the new year we will be able in suspicious cases of that nature to detect these as readily as we now can the more common form of poison. Permit me also to express the hope that the new year will bring us data as to the crystallography of the different poisons as they migrate and disperse through the body. As a means of their future identification both post and ante-mortem much valuable information might be derived from such. The scientific world has sustained a very great loss by the sudden death of Prof. Pasteur, whose fame is world-wide. The Medico-Legal Society has sustained a great loss by the death of its beloved Chemist,

Prof. Mott. While Europe now mourns the death of her greatest scientist, Prof. Pasteur, America is likewise mourning the death of her great chemist, Prof. Mott.

W. B. McVEY,
2 Adams Terrace, Dorchester, Mass.,
Toxicologist Medico-Legal Society.

ANNUAL REPORT OF THE CHEMIST.

PHILADELPHIA, February 15th, 1897.

To the Members of the Medico-Legal Society:

Having been requested to make a report on the progress of chemistry during the past year, it is with much satisfaction that we note the many medico-legal cases in which chemical science has played such an important part as evidence during the year 1896.

The attention of the Society should be called to the somewhat recently discovered fallacy existing in Reinsch's test for arsenic. This was always accepted in court, taught in all the text-books and regarded by chemists to be the crucial test for arsenic. It remained for the late Prof. Theo. G. Wormley to detect an error in this test he having obtained octahedral crystals from antimony by Reinsch's test. This has a very important bearing upon medico-legal cases, one case of trial for poison having been recently lost in Camden through the error.

Chemistry the past year has added more data to our fund of knowledge of the post-mortem absorption of poisons. We can with the greatest certainty include in the list of those toxic agents that diffuse after death, the vegetable poison strychnia.

It is regretted that a method of discriminating between that poison administered before death and that introduced after, has not crowned our efforts during the past year. That the science of chemistry alone will solve this vitally important question, there is very little hope.

The year 1896 has taken from our midst the honored Chemist of the Medico-Legal Society, Prof. Henry A. Mott, whom we cherished as a friend, loved for his sterling qualities and respected for his wonderful knowledge of the natural sciences. As an expert in trials his word was unquestioned. His death cast a gloom over the Society.

GEORGE B. MILLER, M. D., Chemist.

BACTERIOLOGY.

ANNUAL REPORT OF THE BACTERIOLOGIST OF THE MEDICO-LEGAL SOCIETY.

To the Fellows of the Medico-Legal Society:

There is little to report as to the progress of bacteriological investigation during the year just closed in its relation to crime.

The science is sufficiently advanced to make us aware of the dangerous role that bacteriological cultures might play in the perpetration of crime, used by the criminal skilled in the well-known results of certain forms of bacilli, of recognized fatality upon animal life.

The criminal use of the bacilli of typhus would, if given in the food of the victim, be fatal.

The same would be true of cholera, diphtheria or any fatal disease, that could be communicated through the mucous membrane or the intestinal tract.

The problem is, how could crime thus committed, be detected by any means now known to science?

The recent action of the New York Board of Health in an effort to diminish the chances of the further undue spread of phthisis, (whatever may be thought of the merits of the plan,) is a distinct official recognition of the nature

of this dread disease, and that all means that militate or prevent the inhalation of the dessiccata of the sputum tend to prevent it are important. It opens a new thought as to a line of inquiry, into what may have been the origin of certain forms of nervous and mental diseases; and serves to throw new light on the phenomena thus far observed, especially in *chorea*, where it appears to be almost epidemic in schools, and the spread of this disease among more recent claims of new discoveries in Bacteriology is one of great interest.

Prof. Piannese of Naples, asserts that in a case of death from *chorea minor* he found in the *medulla oblongata* an isolated Bacillus.

This he cultured and injected into the *dura mater* of different animals with the result of producing chorea.

This opens a new field of investigation of both the cause and cure of cerebral nervous and mental diseases, first as to the cause, and second, as to the proper serum for use in mental diseases for cure.

So far as known no case involving a judicial inquiry has come before our courts on any allegation of crime.

The sad and untimely death of Prof. H. A. Mott, Jr., the distinguished Chemist of the Society, with whom this work has been so intimately associated in the past, has been a great loss not only to the Society but to science and has cast a feeling of sadness and gloom over his confreres.

Respectfully submitted,

G. BETTINI DI MOISE, M. D.,
No. 42 W. 25th Street, New York City,
Bacteriologist of the Medico-Legal
Society.

December 31, 1897.

ANNUAL REPORT OF THE MICROSCOPIST.

OFFICE OF THE MICROSCOPIST OF THE
MEDICO-LEGAL SOCIETY,

NEW HAVEN, Conn.

The past year has been noted for the great increase of work with the microscope in anatomy, physiology and legal chemistry. The nervous system is being investigated to determine whether intemperance is caused by a physical disease, and incidentally to show what mental troubles are so connected with physical changes as to mark the want of responsibility.

The distinction between vegetable poisons and ptomaines and leucomaines seems likely to be referred to the microscope. The sediments in tinctures have been attacked by the microscope in several legal cases. Yet we have no very marked results to report for the past year.

MOSES C. WHITE, M. D.,
Microscopist to the Medico-Legal Society.

MEDICO-LEGAL SOCIETY.

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Physical Examinations of Plaintiffs in Damage Cases, By GEORGE CHAFFEE, M. D., Brooklyn.
" " " " By CLARK BELL, LL. D., of N. Y. City.
Amendments to Law of Commitment of the Insane, REPORT OF COMMITTEE MED. LEG. SOC.
Hypnotism and the Law, By CLARK BELL, ESQ., LL. D.
The Office of Coroner, By ALBERT T. WESTON, M. D., Coroner Physician.
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Hypnotic Power, What Is It? By JUDGE ABRAHAM H. DAILY, of Brooklyn.
Child Life Insurance, By FRED. L. HOFFMAN, Esq., of N. J.
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Gunshot Wounds, By J. N. HALL, M. D., of Col.
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Medico Legal Surgery, ANNUAL REPORT OF SECTION MED. LEG. SOC.
Hypnotism in Courts of Law, By CLARK BELL, ESQ., LL. D., of N. Y.
Municipal Responsibility, By L. D. MASON, M. D., of N. Y.
Legal Responsibility of Inebriety, By T. D. CROTHERS, M. D., of Conn.
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The Legal Test of Insanity. R. L. GUERNSEY, ESQ., of the New York Bar.
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A Popular Medical Error. By E. P. BUFFETT, M. D., of Jersey City, N. J.
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Medico-Legal Points in the Maybrick Case. By HARRIETTE C. KEATINGE, M. D. of N. Y.
Compulsory Vaccination. By MONTAGUE R. LEVERSON, M. D., of N. Y.
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True Test of Criminal Responsibility of the Insane. By THE EDITOR.
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Progress of Psychological Studies. By SOPHIA McCLELLAND.
Psychological Progress. By MARGHERITA A. HAMM, of New York.
Gas Poisoning. By PROF. W. B. McVEY and I. G. COXWELL, of Boston; CHAS. A. DOREMUS, of New York; VICTOR C. VAUGHAN, of Michigan; M. C. WHITE, of Yale, and DR. GEO. B. MILLER, of Philadelphia.
A Brief for the Cigarette. By W. H. GARRISON, ESQ., of New York.
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I trust that the publication will receive the encouragement that its merits so richly deserve. Respectfully, etc., JAS. E. SHEPHERD.

SUPREME COURT OF TEXAS.

AUSTIN, 1894.

I have had occasion to read and examine the MEDICO-LEGAL JOURNAL, edited by Clark Bell, Esquire, of New York, and have found it an able and interesting publication. It is useful to all who are concerned with the jurisprudence relating to insanity; and I would especially commend it to the judges of criminal courts and to prosecuting officers throughout the country.

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Series 4 of Volume I. of this work is now ready for delivery. It will embrace the States of Pennsylvania and Delaware. The historical sketch of the Pennsylvania Supreme Court is prepared by Judge F. Carroll Brewster, of Philadelphia. The portraits will be from the private collection of Judge James T. Mitchell, one of the Judges of the Supreme Court of Pennsylvania. The sketch of Pennsylvania is in the September number of the MEDICO-LEGAL JOURNAL.

The historical sketch of the Supreme Court of Delaware is from the pen of Hon. Ignatius C. Grubb, of the Supreme Bench of that State, who has also collected the portraits of the Judges and ex-Judges for the work, and is in the December number (1894) of the MEDICO-LEGAL JOURNAL. Three series of this volume have already appeared.

Series 1. Embracing Texas and Kansas.

Series 2. New Jersey and Oregon.

Series 3. Alabama, Georgia, and New Brunswick, which can be supplied on application.

The States of Massachusetts, Connecticut, Rhode Island, Michigan, Ohio, and others will shortly follow.

Volume I. will be composed of a sufficient number of States to make a suitable volume.

The price is \$5 per volume, payable in advance. The serial numbers will be sent subscribers if desired, as fast as issued, in advance of the completion of the volume.

The work is published by the MEDICO-LEGAL JOURNAL, and under the supervision of its editor.

The thanks of the editor is due to Hon. James T. Mitchell, of the Supreme Court of Pennsylvania, for his aid in procuring the illustration of the members of that court, and for valuable suggestions as to the work. Also to Judge F. Carroll Brewster, who has prepared the sketches of that court and bench.

Judge Ignatius C. Grubb, has supplied, with infinite pains and care, the same data for the State of Delaware. The illustrations for Delaware will embrace all the Chief Justices of that State, all the Chancellors, and the present Bench of the Court of Errors and Appeals of Delaware.

Mr. Russell Gray, of the Boston Bar, has prepared a sketch for Massachusetts, and Judge Oliver Wendell Holmes, of that bench, is giving valuable aid. It is intended to embrace in its illustrations many of the Chief and Associate Judges of Massachusetts and the present Bench.

Judge Simeon E. Baldwin, of Connecticut, of the Supreme Court of that State, has also completed the historical sketch, but the entire work for the State is not quite ready.

Mr. Ralph Stone and Mr. H. D. Jewell, of Grand Rapids, Michigan, have been designated by the Judges of the Supreme Court to write the sketch for that State. Judge Conway W. Noble, of Cleveland, is engaged on the work for the State of Ohio. E. C. Smith, Esq., of the Raleigh Bar, has been selected by the Chief Justice of the Supreme Court of North Carolina for a like service in that State.

Grateful for favors already received, subscriptions are solicited; also data and portraits of the earlier Judges are respectfully requested from any of the States.

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